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TREASURY DECISIONS

UNDER CUSTOMS AND OTHER LAWS

VOL. 30

JANUARY-JUNE, 1916

W. G. MCADOO

Secretary of the Treasury

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

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LETTER OF INSTRUCTION.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., June 30, 1916.

The following instructions are published for the information and guidance of customs officers and others concerned:

1. Decisions of the Board of United States General Appraisers adverse to the Government will, if not appealed from, take effect 60 days after their respective dates, except that decisions based on protests filed in Alaska and in the insular and other outside possessions of the United States will take effect 90 days after their respective dates, in accordance with subsection 29 of section 28 of the act of August 5, 1909. Entries covering the merchandise the subject of such decisions will be reliquidated in harmony therewith at the expiration of the period mentioned, except that entries covering merchandise the subject of decisions of the board which follow a given decision of the Court of Customs Appeals involving the same issue will be reliquidated immediately upon receipt of orders from the board.

2. Entries the subject of protests which have not been forwarded to the board, and which are covered in principle by a given decision of the Court of Customs Appeals, will be reliquidated in harmony with the said decision after 30 days have elapsed from the date thereof.

3. Unliquidated entries which involve issues covered by a given decision of the Court of Customs Appeals, and which would in ordinary course be liquidated within 30 days after the rendering of such decision, will be suspended until 30 days have elapsed from the date of such decision, and will then be liquidated in accordance with the principle laid down by the court.

4. In the absence of specific instructions from the department to the contrary, decisions of the Board of United States General Appraisers adverse to the Government, if appealed from by the department, will not result in any change of practice prior to the decision of the appeal by the Court of Customs Appeals.

5. Decisions of the Court of Customs Appeals adverse to the Government will become effective upon the issuing of orders by the Board of United States General Appraisers pursuant to the mandates of the said court. Entries covering the merchandise the subject of such decisions will be reliquidated only upon receipt of such orders.

W. G. McADOO,
Secretary of the Treasury.

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CUSTOMS.

(T. D. 36035.)

Values of foreign coins.

[Circular No. 1.]

TREASURY DEPARTMENT, *January 1, 1916.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of pure metal contents of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning January 1, 1916, expressed in any such metallic currencies.

Entries of merchandise liquidated upon the values proclaimed herein will be subject to reliquidation upon the order of the Secretary of the Treasury whenever satisfactory evidence shall be produced to him showing that the values in United States currency of the foreign money specified in the invoices were at the date of certification at least 10 per cent more or less than the values herein proclaimed.

W. G. MCADOO,
Secretary of the Treasury.

Estimate by Director of the Mint of the values of foreign coins.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.*
Argentine Republic	Gold	Peso	$0.9648	Currency: Depreciated paper, convertible at 44 per cent of face value.
Austria-Hungary	do	Crown	.2026	
Belgium	Gold and silver.	Franc	.1930	Member of Latin Union; gold is the actual standard.
Bolivia	Gold	Boliviano	.3893	12½ bolivianos equal 1 pound sterling.
Brazil	do	Milreis	.5462	Currency: Government paper; exchange rate about 25 cents to the milreis.
British colonies in Australasia and Africa.	do	Pound sterling	4.8665	
Canada	do	Dollar	1.0000	

* The exchange rates shown under this heading are recent quotations and given as an indication of the values of currencies which are fluctuating in their relation to the legal standard. They are not to take the place of the consular certificate where it is available.

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Estimate by Director of the Mint of the values of foreign coins—Continued.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.
Central American States:				
Costa Rica	Gold	Colon	$0.4653	
British Honduras	do	Dollar	1.0000	
Nicaragua	do	Cordoba	1.0000	
Guatemala	Silver	Peso	.3841	Guatemala: Currency, inconvertible paper; exchange rate about 40 pesos equal $1. Honduras: Currency, bank notes. Salvador: Currency, convertible into silver on demand.
Honduras				
Salvador				
Chile	Gold	do	.3650	Currency: Inconvertible paper; exchange rate, approximately, $0.14.
China	Silver	Tael: Amoy	.6296	
		Canton	.6277	
		Chefoo	.6022	
		Chin Kiang	.6151	
		Fuchau	.5824	
		Haikwan (customs)	.6406	
		Hankow	.5891	
		Kiaochow	.6101	
		Nanking	.6230	
		Niuchwang	.5905	
		Ningpo	.6054	
		Peking	.6138	
		Shanghai	.5751	
		Swatow	.5816	
		Takau	.6336	
		Tientsin	.6101	
		Dollar: Yuan	.4126	
		do: Hongkong	.4141	
		do: British	.4141	
		do: Mexican	.4172	
Colombia	Gold	Dollar	1.0000	Currency: Inconvertible paper; exchange rate, approximately, $105 paper to $1 gold.
Cuba	do	Peso	1.0000	
Denmark	do	Crown	.2680	
Ecuador	do	Sucre	.4867	
Egypt	do	Pound (100 piasters)	4.9431	The actual standard is the British pound sterling, which is legal tender for 97½ piasters.
Finland	do	Mark	.1930	
France	Gold and silver.	Franc	.1930	Member of Latin Union; gold is the actual standard.
German Empire	Gold	Mark	.2382	
Great Britain	do	Pound sterling	4.8665	
Greece	Gold and silver.	Drachma	.1930	Do.
Haiti	Gold	Gourde	.9647	Currency: Inconvertible paper; exchange rate, approximately, $0.16.
India (British)	do	Rupee	.3244	15 rupees equal 1 pound sterling.
Italy	Gold and silver.	Lira	.1930	Member of Latin Union; gold is the actual standard.
Japan	Gold	Yen	.4985	
Liberia	do	Dollar	1.0000	Currency: Depreciated silver token coins. Customs duties are collected in gold.
Mexico	do	Peso	.4985	Mexican exchange rate violently fluctuating, approximately, $0.15.
Netherlands	do	Florin	.4020	
Newfoundland	do	Dollar	1.0139	
Norway	do	Crown	.2680	
Panama	do	Balboa	1.0000	
Paraguay	Silver	Peso	.3841	Currency: Depreciated paper; exchange rate 1,550 per cent.
Persia	Gold and silver.	Kran	.1700	This is the value of the gold kran. Currency is silver circulating above its metallic value; exchange value of silver kran, approximately, $0.0675.
Peru	Gold	Libra	4.8665	
Philippine Islands	do	Peso	.5000	

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Estimate by Director of the Mint of the values of foreign coins—Continued.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.
Portugal	Gold	Escudo	$1.0806	Currency: Inconvertible paper; exchange rate, approximately, $0.70½.
Roumania	do	Leu	.1930	
Russia	do	Ruble	.5146	
Santo Domingo	do	Dollar	1.0000	
Servia	do	Dinar	.1930	
Siam	do	Tical	.3709	
Spain	Gold and silver.	Peseta	.1930	Valuation is for the gold peseta; currency is silver circulating above its metallic value; exchange value, approximately, $0.20.
Straits Settlements	Gold	Dollar	.5678	
Sweden	do	Crown	.2680	
Switzerland	do	Franc	.1930	Member of Latin Union; gold is the actual standard.
Turkey	do	Piaster	.0440	100 piasters equal to the Turkish £.
Uruguay	do	Peso	1.0342	
Venezuela	do	Bolivar	.1930	

(T. D. 36036.)

Flax hose.

Seamless flax fire hose will continue to be assessed with duty at the rate of 35 per cent ad valorem under the provisions of paragraph 284 of the tariff act of 1913 for manufactures of flax or other vegetable fiber not specially provided for.

TREASURY DEPARTMENT, *January 3, 1916.*

SIR: The department duly received your letter of the 10th ultimo, further in regard to the decision of the Board of United States General Appraisers of November 10, 1915, G. A. 7809 (T. D. 35879), involving the classification of certain hose which had been assessed with duty at the rate of 35 per cent ad valorem as a manufacture of flax under paragraph 284 of the tariff act, but which was held by the board to be dutiable at the rate of 7 cents per pound as hydraulic hose under paragraph 274.

It appears that the hose was a seamless flax fire hose and that the decision is contrary to the department's ruling of April 11, 1914 (T. D. 34373), but as you were previously informed, the Assistant Attorney General has advised the department that an appeal from the board's decision in question does not seem advisable because of the unsatisfactory nature of the record, and that a new case is being prepared before the board.

Pending a judicial determination of the question, therefore, you will continue to assess duty on the merchandise of the character in question at the rate of 35 per cent ad valorem under the pro-

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visions of paragraph 284 of the tariff act of 1913 for manufactures of flax or other vegetable fiber not specially provided for.

Respectfully, ANDREW J. PETERS,
(101863.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *St. Albans, Vt.*

(T. D. 36037.)

Cigars, etc.—Bonded warehouses.

Cigars, etc., manufactured in bonded manufacturing warehouses—Exportation by parcel post—Amending T. D. 35186.

TREASURY DEPARTMENT, *January 3, 1916.*

To collectors and other officers of the customs:

Where cigars, cheroots, cigarettes, and smoking and plug tobacco manufactured in bonded manufacturing warehouses, under the provisions of paragraph M of section 4 of the tariff act of October 3, 1913, are withdrawn for exportation to countries with which the United States has parcel-post conventions, but which can not be dispatched under registration, customs officers may accept the prescribed "certificate of mailing" in lieu of the registry receipt, the certificate of mailing to be delivered to the customs officer for filing at the customhouse with his return of the inspection. T. D. 35186 of March 5, 1915, and the fifth paragraph of article 774 of the Customs Regulations of 1915 are amended accordingly.

(25885.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36038.)

Customhouse brokers.

List of customhouse brokers on December 31, 1915.

TREASURY DEPARTMENT, *January 4, 1916.*

To collectors of customs and others concerned:

Herewith is published for your information a list of customhouse brokers who were licensed as such on December 31, 1915.

In order that the list of customhouse brokers on file at the department may be kept up to date, collectors should immediately report any changes made in their respective districts.

(13170.) ANDREW J. PETERS, *Assistant Secretary.*

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List of customhouse brokers.

Brokers.	Location.
District No. 1.	
Grand Trunk Ry. System	Portland, Me.
Leavitt, Wm	Do.
Reford Co., Robert	Do.
Rich, E. A	Do.
Miles, A. L	Calais, Me.
Dennis, A. L	Eastport, Me.
Leavitt, A. H	Do.
Letorte, A. F	Fort Fairfield, Me.
Esson, E. A	Lowelltown, Me.
Mayo, A. H	Van Buren, Me.
American Express Co	Vanceboro, Me.
Jackman, B	Do.
Moore, M. W	Do.
District No. 2.	
Myers & Co., F. W	Alburg, Vt.
Spencer, H. D	Beecher Falls, Vt.
Stevens, Charles H	Do.
Pike, William F	Derby Line, Vt.
Lyon, J. H	Highgate, Vt.
Gleeson, W. A	Island Pond, Vt.
Avery, W. J	Newport, Vt.
Burns, F. D	Do.
Eston, G. J	Do.
Emery & Co., C. S	Do.
Grow, A. R	Do.
Mitchell, W. A	North Troy, Vt.
Gibson, M. L	Richford, Vt.
McGettrick, P	Do.
Loiselle, George L	Swanton, Vt.
Hull, Clarence A	West Berkshire, Vt.
District No. 3.	
None.	
District No. 4.	
Adams Express Co	Boston, Mass.
American Express Co	Do.
Arzillo, Carlo F	Do.
Atkinson, Haserick & Co	Do.
Avanzino, Lorenzo	Do.
Baldwin, Austin & Co	Do.
Bedell, Freeman W	Do.
Bouchie, William F	Do.
Burke, James J	Do.
Campbell, Archibald M., jr	Do.
Cangiano, Michael	Do.
Cochran, Burns & Farnsworth Co.	Do.
Conkey, John A., & Co	Do.
Crowell & Thurlow	Do.
Davies, Turner & Co	Do.
Day, Ernest F	Do.
Diemont, Hyman	Do.
Di Rago, Ascanio	Do.
Downing, Edward H	Do.
Downing, T. D., Co	Do.
Dudley, George E	Do.
Emery, John S., & Co. (Inc.)	Do.
Freeman, Alfred E	Do.
French, J. M	Do.
Gilbert, Osgood A	Do.
Globe Transportation Co	Do.
Grant, Guy Carleton	Do.
Greene, Maurice R	Do.
Guilford, Robert S	Do.
Hall, John G., & Co	Do.
Hammond, H. F	Do.
Langley, Charles H	Do.
Lombard's, A. C., Sons	Do.
Lynch, John H	Do.
Mason, George A	Do.
Merchant Marine Agency	Do.
Metcalf, Ernest C	Do.
Musolino & Berger	Do.
Palmer, P. L	Do.
Peabody, Hy. W., & Co	Do.
Peters, L. H	Do.
District No. 4—Cont'd.	
Pistorino, Joseph	Boston, Mass.
Porter, H. L	Do.
Proctor, W. N., Co	Do.
Purtell, John J	Do.
Quinn, Charles E	Do.
Reading, Walter B	Do.
Rice, Harold	Do.
Rich & Clay	Do.
Roberts, F. L., & Co	Do.
Rowe, A. A. & Son Co	Do.
Simpson, David W	Do.
Splane Bros	Do.
Stewart, William Miller	Do.
Stone & Downer Co	Do.
Tasker, A. L	Do.
Tedeschi, Edward	Do.
Tutein, Shoules & Clay Co	Do.
White, William	Do.
Winsor, Alfred, & Son	Do.
Wood, Harry R	Do.
Babson, Fitz J	Gloucester, Mass.
Foley, William	Do.
Parkhurst, Percy C	Do.
Rousseau, Henry A	Worcester, Mass.
District No. 5.	
Caldarone, Peter J	Providence, R. I.
Goff & Page	Do.
Koehne, Charles H., jr	Newport, R. I.
District No. 6.	
Howard, Lawrence A	Hartford, Conn.
District No. 7.	
Byrns, W. S	Ogdensburg, N. Y.
Dillingham, E	Do.
Canfield, J. O	Cape Vincent, N. Y.
O'Brien, O. L	Do.
Massey, C. Albert	Malone, N. Y.
McNulty, J. H	Do.
McCollister, C. F	Mooers Junction, N. Y.
Watson, Harry A	Morristown, N. Y.
Mathias, E. M	Rouses Point, N. Y.
Myers & Co., F. W	Do.
Claffey, L. J	Waddington, N. Y.
District No. 8.	
Chamberlin, Ira A	Rochester, N. Y.
Gliddon, Charles J	Do.
Hogan, W. E	Charlotte, N. Y.
District No. 9.	
American Express Co	Buffalo, N. Y.
Bird, Wm. A	Do.
Carey, William C	Do.
Cirrincione, Anthony	Do.
Collins, John C	Do.
Colluci, Ralph	Do.
Dow, Harry P	Do.
Fraser, Alexander S	Do.
Fielden, V. A	Do.
Gaston, H. G	Do.
Gilmartin, Earl J	Do.
Hay, Thomas	Do.
Heckman, Charles	Do.
Herbert, William J	Do.
Keating, Austin J	Do.
Lane, J. F	Do.
Lehrbach, Kate E	Do.
Maydole, H. H	Do.
Michigan Central R. R. Co	Do.
Michigan Central and New York Central Freight Office.	Do.
Mutual Transit Co	Do.

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List of customhouse brokers—Continued.

Brokers.	Location.
DISTRICT No. 9—Cont'd.	
New York Central R. R. Co.	Buffalo, N. Y.
Perhamus, J. H.	Do.
Poleto, Santo	Do.
Pray, George A.	Do.
Richardson, R.	Do.
Riley, E. B. D.	Do.
Sandel, William	Do.
Sheibert, William J.	Do.
Skinner, F. H.	Do.
Taylor, Robert W.	Do.
Wilbee, Thomas	Do.
Williamson, C. H.	Do.
Wurtz, Julius	Do.
American Express Co.	Niagara Falls, N. Y.
Fletcher, R. H.	Do.
Lemley, Virgil E.	Do.
Schneider, E. J.	Do.
Tower, C. J.	Do.
DISTRICT No. 10.	
Ackerson, Ed. M., & Co.	New York, N. Y.
Adamo, Carlo	Do.
Adams Express Co.	Do.
Ahrnke, William G.	Do.
Albrecht, Louis M.	Do.
Ali, George D.	Do.
Allstaedt, C. L.	Do.
Alpers & Mott	Do.
American & European Forwarding Co.	Do.
American Express Co.	Do.
American Shipping Co.	Do.
Amerman & Patterson	Do.
Andrews, D. C., & Co. (Inc.)	Do.
Arguimbau, D. V., & Co.	Do.
Asche, Charles H., & Co.	Do.
Asclone, G.	Do.
Austin, Baldwin & Co.	Do.
Auerbach, Robert	Do.
Avis, William A., & Co.	Do.
Babcock, H. W.	Do.
Baker, Albert E.	Do.
Baker-Miller Shipping Co.	Do.
Baldwin Shipping Co.	Do.
Bane, Hill & Ward	Do.
Basse, Lincoln	Do.
Benkart, Frank J.	Do.
Berendson, C. G.	Do.
Berner, H. S.	Do.
Bertrose Co.	Do.
Blake, George L.	Do.
Bleidorn, Charles	Do.
Bloom, J. William	Do.
Bogan, Jacob, jr.	Do.
Bolte & Bos	Do.
Borea, William	Do.
Boyd, Tyrone	Do.
Bridgetts & Co.	Do.
Brooks & Miller	Do.
Brown & Roese	Do.
Brown, Wm. A., & Co.	Do.
Buchey, E. L.	Do.
Budd, B. R.	Do.
Bull, A. H., & Co.	Do.
Bunker, Edward	Do.
Byrne, Gerald J.	Do.
Byrnes & Lowery	Do.
Cambell & Gardiner	Do.
Cameron, Alex.	Do.
Carter, Robert H.	Do.
Chadwick, C. W., & Co.	Do.
Coccaro, A. J.	Do.
Comstock, F. M.	Do.
Consmiller, Louis A.	Do.
Coppola, A.	Do.
Corbett, M. J., & Co.	Do.
Core & Herbert	Do.
Cortelyou, C. V. W.	Do.
Cox, Robert W., & Co.	Do.
Crossmond, G. W.	Do.
DISTRICT No. 10—Cont'd.	
Davies, Turner & Co. (Inc.)	New York, N. Y.
Devoy, John W.	Do.
Di Angelo, M.	Do.
Dingelstedt & Co.	Do.
Dougherty, Theo.	Do.
Downing, R. E., & Co.	Do.
Downing, T. D., & Co.	Do.
Dumont, W. H., & Co.	Do.
Ebro Brokerage Co.	Do.
Eckstein, M. L., & Co.	Do.
Edlund, Arthur O.	Do.
Elliot, John A.	Do.
Elwell, J. W., & Co.	Do.
Engelhart, Meyer & Co.	Do.
Faekner, August D.	Do.
Fahner, Albert	Do.
Falconi, Charles A.	Do.
Farris, M., & Co.	Do.
Foohey, John W.	Do.
Force, Wm. H., & Co.	Do.
Foster, Wm. A., & Co.	Do.
Fox, Fred. William	Do.
Friedenberg, Charles (Inc.)	Do.
Friedenberg, Jacob	Do.
Garvin, E. L., & Co.	Do.
Gascoigne, Thomas R.	Do.
Gavin & Co.	Do.
Gertzen, F. William, & Co.	Do.
Gilder, Harry M.	Do.
Gilmartin & Trundy	Do.
Gluck, John D., & Son (Inc.)	Do.
Godwin, R. J.'s Sons	Do.
Godwin, Samuel's Sons	Do.
Gombers, Eugene W.	Do.
Graham, B. H., & Co.	Do.
Gray Brothers	Do.
Gurge & Co.	Do.
Hammond, R. R.	Do.
Hampton, J. W., jr., & Co.	Do.
Happel & McEvoy	Do.
Harrison, M., & Co. (Inc.)	Do.
Hartfield, Solari & Co.	Do.
Hay, George T.	Do.
Haynes, C. A., & Co.	Do.
Henjes, Frederick, jr.	Do.
Hensel, Bruckmann & Lorbacher.	Do.
Henshaw, George A., & Sons	Do.
Herwig, Justus, jr.	Do.
Hesse, D. S., & Co.	Do.
Hirshback & Smith	Do.
Hobby, L. H., jr.	Do.
Hoey, V. B.	Do.
Holt, C. J., & Co.	Do.
Holtzoff, L. S., & Co.	Do.
Homan & Puddington	Do.
Houston, Samuel, & Co.	Do.
Hudson Forwarding & Shipping Co.	Do.
Hunter, Robert J.	Do.
Hussa & Co.	Do.
Inguglia, Vincent (Inc.)	Do.
Interocean Forwarding Co.	Do.
Irwin, Jas. D., & Co.	Do.
Isaacs, Vought & Co.	Do.
Jannace, A.	Do.
Jasper, T. A., jr.	Do.
Jones, Herbert L.	Do.
Jordan-Hodgens Co.	Do.
Judson Freight Forwarding Co.	Do.
Kamke, C. E.	Do.
Kemp, E. C. M.	Do.
Kemp, Ed.	Do.
Keve, Alfred M.	Do.
Kirkland, Percy	Do.
Knauth, Nachod & Kuhne	Do.
Knowlton & Sackett	Do.
Kraemer, F. L., & Co.	Do.
Kronfeld, Saunders & Co.	Do.
Kuyper, P. C., & Co.	Do.

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List of customhouse brokers—Continued.

Brokers.	Location.
District No. 10—Cont'd.	
Lang, Richard F.	New York, N. Y.
Leake, Renville	Do.
Lee, Chas. B	Do.
Lunham & Moore	Do.
McCord, H. D	Do.
McDaniels, S. A	Do.
McKinney, Wm. L	Do.
McLoughlin, Jas	Do.
Magee, W. T., & Co	Do.
Maltus & Ware	Do.
Manno, F. B	Do.
Manual, Jas. J	Do.
Markland & Reed	Do.
Markwalter, Frank J	Do.
Martin, H. D	Do.
Masece & Co	Do.
Masters, J. W., & Co	Do.
Mastrangelo, G. B	Do.
Mayer, Herbert	Do.
Mayo, Fred M	Do.
Meadows, Thomas, & Co	Do.
Molitor, Peter	Do.
Montag & Cassidy	Do.
Moore, Theo. B., & Co	Do.
Mullally, M	Do.
Murphy, Alex., & Co	Do.
Murray, A. Judson	Do.
Murray, Joseph C	Do.
Nelson, Fred. O., & Co	Do.
New York Forwarding Co. (Inc.).	Do.
Nicholas, G. S., & Co	Do.
Nichols, George W	Do.
Niebrugge & Day	Do.
Norman, John A., & Co	Do.
Oelrichs & Co	Do.
Overton & Co	Do.
Paul, A. T	Do.
Pendleton Bros. (Inc.)	Do.
Perry, Ryer & Co	Do.
Petry, P. H., & Co	Do.
Phinny, C. M	Do.
Pomerance, S	Do.
Porto Rican Express Co	Do.
Post, Alfred H	Do.
Price, Fred H	Do.
Pritchard & Co	Do.
Purcell, Robert M	Do.
Puy, Ferd	Do.
Redden & Martin	Do.
Reeve, Theo. E	Do.
Rice, Elva B	Do.
Richards, C. B., & Co	Do.
Richter, Peter F	Do.
Rietmann-Pilcer Co	Do.
Ringk, A. H., & Co	Do.
Rollo, F. S	Do.
Ryan, F. M	Do.
Ryder, C. C., & Co	Do.
Santillo, Dominick	Do.
Santini & Borea	Do.
Scammell Bros	Do.
Schmidt, Gustav M	Do.
Scotto, Vincent	Do.
Sellers, C. W	Do.
Sessa, Joseph	Do.
Sexton & Bryant	Do.
Sheldon, G. W., & Co	Do.
Simpson, Clapp & Co	Do.
Skidmore, E. M., jr	Do.
Smith, Charles T	Do.
Smith, Ed. E	Do.
Smith, J. D., & Co	Do.
Smith Shipping Co	Do.
Snow's U. S. Sample Express Co.	Do.
Solari, Ernesto	Do.
Sommer, A	Do.
Spence, C. R	Do.
District No. 10—Cont'd.	
Spring & Applegate	New York, N. Y.
Stauff, August	Do.
Steenken, John E	Do.
Stegemann, E., jr	Do.
Stern, Samuel	Do.
Stiner, Wm. H., & Son	Do.
Strasser, Leopold	Do.
Stone, Charles D., & Co	Do.
Sutherland International Despatch.	Do.
Sweeney, William H	Do.
Taub, Max	Do.
Thomas, C. M	Do.
Thomas & Pierson	Do.
Thomas, W. W., & Co	Do.
Thompson, W. I	Do.
Thornton, W. A	Do.
Tice & Lynch	Do.
Todd, T. S., & Co	Do.
Travis & Parks	Do.
Vandegrift, F. B., & Co	Do.
Verkruzen, Charles P., & Co.	Do.
Von Sallet & Cox	Do.
Vogt, W. A. L	Do.
Wachse, Charles G	Do.
Wagner, George E	Do.
Wakem & McLaughlin	Do.
Wallace, Frank E	Do.
Warden, David F	Do.
Wedemann, Ernst	Do.
Wells, Fargo & Co. Express	Do.
Winchester, J. H., & Co	Do.
Winship, W. M	Do.
Wood, Niebuhr & Co	Do.
Woodruff & Co	Do.
Young, Daniel F., jr	Do.
Young, William G	Do.
Young, G. Stephen	Do.
Ziegler, John J	Do.
Curtis, H. F	Albany, N. Y.
De Leon, A. R	Perth Amboy, N. J.
District No. 11.	
Bailey, E. H., & Co	Philadelphia, Pa.
Berwind-White Coal Mining Co.	Do.
Buchey, J. J., & Co	Do.
Christian, A. W	Do.
Cummins, A. D., & Co	Do.
Dilkes, H. P., & Co	Do.
Eissing, Eugene A	Do.
Faunce, John H	Do.
Flynn, John M	Do.
Gabriel, Joseph C	Do.
Grandfield, W. J., & Co	Do.
Hagar, W. F., & Co	Do.
Hampton, J. W., jr., & Co	Do.
Hempstead, O. G., & Son	Do.
Koons, Wilson & Co	Do.
Larzelere, Wm., & Co	Do.
McCarthy, John A	Do.
Moe, Christian	Do.
Munson Steamship Line	Do.
Murphy, Alex., & Co	Do.
Rubelli's, L., Sons	Do.
Taylor's, Chas. M., Sons (Inc.)	Do.
Vandegrift, F. B., & Co	Do.
Vandiver, John L	Do.
Warren, William R	Do.
Zeller, Edwin A., jr	Do.
District No. 12.	
Lent, John F	Pittsburgh, Pa.
Richter, W. A	Do.
Sevin, John V	Do.
Swearer, R. L	Do.
Tice, R. L	Do.

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List of customhouse brokers—Continued.

Brokers.	Location.
District No. 13.	
Anderton, C. A.	Baltimore, Md.
Baltimore & Ohio R. R. Co.	Do.
Bolton, I. Joseph	Do.
Carlin, Maurice B	Do.
Furness, Withy & Co. (Ltd.)	Do.
Gustavus & Co.	Do.
Heffner, Geo. R. B.	Do.
Hermansdorfer, Gottlieb J.	Do.
Masson, Wm. H.	Do.
Robson, Arthur W.	Do.
Shallus, F. H., & Co.	Do.
Volz, Philip	Do.
Wheeden, Richard B	Do.
Seibold, L. P. (Inc.)	Washington, D. C.
District No. 14.	
Anderson, Geo. J	Norfolk, Va.
Ayers, A. G.	Do.
Bailey, A. G	Do.
Brown, W. H.	Do.
Bunting, J. W	Do.
Crockett, T. S	Do.
Graham, W. S.	Do.
Harper, John E	Do.
Hasler Bros. (Inc.)	Do.
Holland, H. B	Do.
Hurst, Lloyd C	Do.
Johns, Kensey	Do.
Littlepage, Lewis	Do.
Odend'hal, Arthur C.	Do.
Parkinson, E. O.	Do.
Ramsay & Co., Robert	Do.
Stone, W. M.	Do.
Telford, John H	Do.
Tredwell, W. B	Do.
Wigg, E. J. Rudgard	Do.
Blood, R. R	Newport News, Va.
Eames, W. W	Do.
Eastman, Arthur A	Do.
Hardy, Irving G	Do.
Holmes, H. B	Do.
Holmes, L. R.	Do.
Keitz, H. A.	Do.
Lawler, Edmund T	Do.
Leslie, H. C.	Do.
Lunning, E. D. J	Do.
Salley, W. H., & Co. (Inc.)	Do.
Newson, George R	Richmond, Va.
District No. 15.	
Heide & Co	Wilmington, N. C.
Maffitt Co., The C. D	Do.
Sprunt, Alexander, & Son	Do.
Whyte, Henry	Do.
District No. 16.	
Molony, James T	Charleston, S. C.
Richards, Frederick	Do.
Roach, William	Do.
Whitsitt, J. M.	Do.
District No. 17.	
Barnes, J. W., & Co.	Savannah, Ga.
Barry, W. A	Do.
Beytagh, F. X	Do.
Deacy, James P	Do.
D'Oyley, H. B.	Do.
Gleason, John F	Do.
Harris, Stephen R	Do.
Howard, Arthur J	Do.
McIver, John K	Do.
Nanninga Co., Henry	Do.
Phinney, H. R.	Do.
Strachan Shipping Co.	Do.
District No. 17—Cont'd.	
Walker, W. J	Savannah, Ga.
Way, W. H.	Do.
Williamson & Rauers Co.	Do.
Young, Robert B	Do.
District No. 18.	
Morris, J. W	Tampa, Fla.
Shore, Philip	Do.
Wilder & Co.	Do.
Young & Clarkson	Do.
Bradley, John	Boca Grande, Fla.
Johnson, W. H.	Do.
Naval Stores Warehouse Co. (Inc.)	Fernandina, Fla.
Strachan Shipping Co.	Do.
Fisher, W. A	Jacksonville, Fla.
Foster, Geo. R., jr	Do.
Logan, J. J., & Co.	Do.
McGiffin, J. G	Do.
McGiffin & Co.	Do.
Mason, W. M., jr	Do.
Terry, Lee L.	Do.
Valentine, H. S.	Do.
Zachry, W. W	Do.
Dorgan, Dexter P	Key West, Fla.
Elgin, A. C.	Do.
Ladd, C. J	Do.
Porter Dock Co.	Do.
Taylor & Co. (Inc.)	Do,
Freas, S. W	Miami, Fla.
Humphries, J. W	Do.
Kellar, W. L.	Do.
Whitten, T. F.	Do.
Brown, A. A.	Pensacola, Fla.
Caro, R. R.	Do.
Hayes, P. S.	Do.
Merritt, J. A., & Co.	Do.
Oliver, C. W	Do.
Pensacola Shipping Co.	Do.
Turner, R. H	Do.
Wilkins, C. L.	Do.
District No. 19.	
Boulo, Paul A	Mobile, Ala.
Cowles, George T	Do.
Gibboney, James	Do.
Gibson, Frank W	Do.
Jones, John H	Do.
Le Blanc, S. A.	Do.
McGonigal, T. G	Do.
Mobile Ship Chandlery Co.	Do.
Nettles, Thomas D.	Do.
Tallmadge, Spencer	Do.
Walsh, J. M.	Do.
District No. 20.	
Bertus, Paul A	New Orleans, La.
Hurt, Albert W., & Co.	Do.
Martin, James C., jr	Do.
Navailles, John P	Do.
Oberle & Henry	Do.
Rueff, George William	Do.
Warriner, Matthew	Do.
District No. 21.	
Crocker, Charles R	Port Arthur, Tex.
Flanagan, Christopher Stephen.	Do.
Flanagan, Richard P	Do.
Gilliland, W. H.	Do.
Martin, Chas., & Co.	Do.
Pfeiffer, P. C.	Do.
Port Arthur-Texas Trans-Atlantic Line.	Do.

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List of customhouse brokers—Continued.

Brokers.	Location.
District No. 22.	
Hawley & Letzerich	Galveston, Tex.
White, Z. L., & Co	Do.
Zanes, W. L., & Co	Dallas, Tex.
Armistead, Geo	Houston, Tex.
Conover, W. L	Do.
Forester, S. V	Do.
Martin, H. D., & Co	Do.
Rabe, H	San Antonio, Tex.
District No. 23.	
Denike, Ed	Laredo, Tex.
Haynes, James J	Do.
Kowalski Brokerage Co	Brownsville, Tex.
Maltby, David	Do.
Scanlan, John P	Do.
Dennett, H. F	Hidalgo, Tex.
Dixon, E. H	Do.
Contreras, Abundio	Rio Grande City, Tex.
District No. 24.	
Aguirre, S. M	El Paso, Tex.
Bailey, F. H	Do.
Baskin, J. Y	Do.
Dwyer, T. A	Do.
Hart, H. L	Do.
Lauriaut, A. W	Do.
McKee, J. H	Do.
Perrine, T. L	Do.
Rives, Gerald	Do.
Sadler, H. G	Do.
Schuster, A. E	Do.
Saggermann, H	Do.
Smith, C. R	Do.
Torres, F. L	Do.
Woodside, T. J	Do.
Wright, J. A	Do.
Reid, B. M	Columbus, N. Mex.
District No. 25.	
Beck, J. D	Eagle Pass, Tex.
Bonnett, F. A	Do.
Carothers, F. W	Do.
Easterling, W. F	Del Rio, Tex.
McHenry, H. G	Presidio, Tex.
District No. 26.	
Holler, C. F	Nogales, Ariz.
Levin, Henry	Do.
Mix, Edw. L	Do.
Southern Pacific Co	Do.
Wells, Fargo & Co. Express	Do.
Nacozari R. R. Co	Douglas, Ariz.
Arizona Eastern R. R. Co	Naco, Ariz.
Folsom, E. A	Do.
Levin & Bonarand	Do.
Wells, Fargo & Co. Express	Do.
District No. 27.	
American Steamship & Customhouse Brokers (Inc.).	Los Angeles, Cal.
Barham, Guy B	Do.
Bell, L. A	Do.
Brucker, E. Roland	Do.
Chambers, John	Do.
Chidester, Drew	Do.
Ferguson, D. W	Do.
Guzman, Chas	Do.
Lehman, C. J	Do.
McBride, James J	Do.
Orsatti, Morris	Do.
Sjoberg, C. J. W	Do.
Wheeler, Elder & Elder	Do.
Wickersham, W. H	Do.
Redondo, J. L	Andrade, Cal.
Aitchison, Robert M	Calexico, Cal.
District No. 27—Cont'd.	
Burdick, E. G	Calexico, Cal.
Gonzales, Gennaro G	Do.
Griswold, H. H	Do.
McCoy, W. I	Do.
Shenk, A. M	Do.
Dowell, Thomas J	San Diego, Cal.
Hutchinson, L. M	Do.
Koeppel, G. N	Do.
Martinez, M. & Co	Do.
Lane, W. W	Tia Juana, Cal.
District No. 28.	
Bellingall, P. W	San Francisco, Cal.
Boden, John H., & Co	Do.
Bunker, C. D., & Co	Do.
Chidester, Drew	Do.
Harper, F. F. G., & Co	Do.
Haskins, Philip J	Do.
Hohwiesner, C., & Co	Do.
Mattoon & Co	Do.
Mayhew, F. E., & Co	Do.
Reed, Geo. W., & Co	Do.
St. John, Chauncey M	Do.
Swayne, Hoyt & Co	Do.
Thomas, H. B., & Co	Do.
Thornley, William H	Do.
Wheeler, R. S	Do.
Wells, Fargo & Co	Do.
Youngberg & Son	Do.
District No. 29.	
Bush, George S., & Co. (Inc.)	Portland, Oreg.
Hicks, J. M	Do.
Houser, M. H	Do.
Meyer, Wilson & Co	Do.
Portland Flouring Mills Co	Do.
Prichard, Anthony T	Do.
Senour, Harry K	Do.
Whitmer-Kelly Co	Do.
Woolsey Co., Frank	Do.
Boelling, V	Astoria, Oreg.
Cherry, E. M	Do.
District No. 30.	
Anderson, B. R., & Co	Seattle, Wash.
Borchgrevink, R. E	Do.
Bush, Geo. S., & Co. (Inc.)	Do.
Dow Co., Frank P. (Inc.)	Do.
Force, L. E	Do.
Franxioli, T. A	Do.
Gorman, John J	Do.
Hanscom, D. J	Do.
Kelly, E. E	Do.
McAlpine, G. E	Do.
Wells, Fargo & Co. Express	Do.
Delanty, H. M	Aberdeen, Wash.
Reid, Andrew	Do.
Wilson, Wm. C	Do.
Barney, H. C	Anacortes, Wash.
Hardcastle, Richard	Do.
Henssler, Gus	Do.
Cole, Thos. B	Bellingham, Wash.
Gillespie, W. J	Blaine, Wash.
Hunter, Mrs. Frankie G	Do.
Jenison, G. B	Do.
Merrill, H. J	Do.
Newall, V. B	Do.
Oty, Lester	Chopaka, Wash.
Reilly, James M	Ferry, Wash.
Brenizer, H. E	Laurier, Wash.
Sneed, J. W	Do.
Mills, L. P	Northport, Wash.
Angeles Stevedoring Co	Port Angeles, Wash.
Hayden, H. T	Port Townsend, Wash.
Klocker, O	Do.
Morrison, H. H	Do.
Rothschild & Co	Do

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List of customhouse brokers—Continued.

Brokers.	Location.
DISTRICT No. 30—Cont'd.	
Baily, Jacob	Spokane, Wash.
Brown, Bedford	Do.
Crabtree, Minnie V	Sumas, Wash.
Soule, C. D	Do.
Armstrong, J	Tacoma, Wash.
Buddy, R. H	Do.
Chidester, Drew	Do.
Dow, Wilbur E	Do.
Fransioli, P. J., & Co	Do.
Pole, E. J	Do.
Steeb, J. T., & Co	Do.
Thornley, Alex W., & Co	Do.
Thornley, Miss G	Do.
Ward, James	Do.
DISTRICT No. 31.	
Myers, U. G	Eagle, Alaska.
Beegle, John R	Ketchikan, Alaska.
Ingersoll, Chas. E	Do.
Fickhardt, F. W	Skagway, Alaska.
Gard, Oscar	Do.
Taylor, H. F	Do.
Warren, Weldon H	Do.
DISTRICT No. 32.	
Cunha, Lawrence	Honolulu, Hawaii.
Davies, Theo. H., & Co. (Ltd.).	Do.
De Freest, S., & Co	Do.
Drew, John H	Do.
Peterson, David L	Do.
Robertson, James W	Do.
Schmidt, W. T	Do.
Weight, Charles S	Do.
Hughes, Richard L	Koloa, Hawaii.
DISTRICT No. 33.	
Herberg, E	Gateway, Mont.
DISTRICT No. 34.	
Shumaker, C. W	Pembina, N. Dak.
Winters, J. E	Ambrose, N. Dak.
Wood, H. W	Hansboro, N. Dak.
Briden, F. L	Neche, N. Dak.
Haberman, H. W	Northgage, N. Dak.
Russell, Edna A	Do.
Mackay, William F	Noyes, Minn.
Donovan, I. J	Portal, N. Dak.
Holmes, C. T	Do.
Thill, J. G	Do.
Seldon, I. G	St. John, N. Dak.
Houck, A	Walhalla, N. Dak.
DISTRICT No. 35.	
Storey, L. T	St. Paul, Minn.
Knowlton, David W	Minneapolis, Minn.
Morgan, F. M	Do.
DISTRICT No. 36.	
Barnes, D	Duluth, Minn.
Spurbeck, G. M	Do.
Woodruff, E. H	Do.
Muncey, L. F	Baudette, Minn.
Davis, Victor W	Ranier, Minn.
Kershaw, Cornelius	Do.
Berg, M. E	Superior, Wis.
DISTRICT No. 37.	
Blumenfeld, Max A	Milwaukee, Wis.
Dey, M. E., & Co	Do.
Heckendorn, J. B	Do.
Hogan, M. J	Do.
DISTRICT No. 38.	
Allison, H. C	Detroit, Mich.
Allison, W. H	Do.
Blakeley, Harvey T	Do.
Carr, C. D	Do.
Carr, John V	Do.
Lawrence, B. R	Do.
McCort, T. H	Do.
Mayo, F. M	Do.
O'Doherty, M	Do.
Raynsford, W. C	Do.
Richardson, J. D	Do.
Taylor, H. E	Do.
Todd, G. H. P	Do.
Whelan, F. S	Do.
Harris, Archie D	Gladstone, Mich.
Boyce, Chas. E	Port Huron, Mich.
Moore, Peter N	Do.
McBean, L	Do.
Shingle, W. W	Do.
White, W	Do.
Foard, Thos. E	Sault Ste. Marie. Mich.
Van Dyke, Harry W	Do.
Wilson, Edmund	Do.
DISTRICT No. 39.	
Adams Express Co	Chicago, Ill.
American Express Co	Do.
American Shipping Co	Do.
Baldwin Shipping Co	Do.
Bernard, Judae & Co	Do.
Caldwell Shipping Co	Do.
Gallagher & Ascher	Do.
International Forwarding Co.	Do.
Manierre, William R	Do.
Marks, Ernest E., Co	Do.
Moore, H. E. & J. O	Do.
Phelps Bros. & Co	Do.
Sheldon, G. W., & Co	Do.
Stone, Chas. D., & Co	Do.
Wakem & McLaughlin (Inc.).	Do.
Wells, Fargo & Co	Do.
DISTRICT No. 40.	
Elliott, Ernest M	Indianapolis, Ind.
DISTRICT No. 41.	
Ball, J. T	Cleveland, Ohio.
Evans, John L	Do.
Fenton, A. W., jr	Do.
Graser-Rothe, M. A	Cincinnati, Ohio.
Rothe, E. H	Do.
Wess, H. A	Do.
Wess, V. T	Do.
Davis, Theodore	Columbus, Ohio.
Wulchet, Edward	Dayton, Ohio.
Judson, Chas. F	Sandusky, Ohio.
Pratt, C. N	Toledo, Ohio.
DISTRICT No. 42.	
Minnegerode, Jas. G., jr	Louisville, Ky.
DISTRICT No. 43.	
None.	
DISTRICT No. 44.	
None.	
DISTRICT No. 45.	
American Express Co	St. Louis, Mo.
Barrett, D. O	Do.
Schade Forwarding Co., Wilfred.	Do.
Wyman, Charles H., & Co	Do.

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List of customhouse brokers—Continued.

Brokers.	Location.	Brokers.	Location.
DISTRICT No. 45—Cont'd.		DISTRICT No. 48.	
Jones, Mrs. A. D	Kansas City, Mo.	None.	
Junod, William G	Do.	DISTRICT No. 49.	
Levy, J. Ralph	Do.	Benitez, Cintes J	San Juan, P. R.
Wyman, Charles H., & Co	Do.	Bozzo, Alejandro, jr	Do.
DISTRICT No. 46.		Rosa, Antonio	Do.
Bushman, W. M	Omaha, Nebr.	Ferreiro, Avelino	Mayaguez, P. R.
Gayer, H. L	Lincoln, Nebr.	Hosta, Jose	Ponce, P. R.
DISTRICT No. 47.		Moringlane, E. M	Do.
Wyman, Charles H., & Co	Denver, Colo.		

(T. D. 36039.)

In transit manifests.

Manifests for merchandise in transit through the United States to be printed on white paper.

TREASURY DEPARTMENT, *January 4, 1916.*

SIR: The department is in receipt of your letter of the 3d ultimo, wherein you refer to T. D. 34580 of June 24, 1914, which, among other things, requires that the special coastwise manifest of merchandise in transit through Canada or Mexico shall be printed on yellow paper, and you request that such instructions be issued as will make the practice uniform in regard to manifests for shipments between ports of Canada and Mexico through the United States.

The manifests for merchandise in transit between ports of Canada and Mexico through the United States prescribed in article 706 of the Customs Regulations of 1915 should be printed on white paper, so as to distinguish them from the manifests covering shipments through Canada and Mexico.

Respectfully,

ANDREW J. PETERS,
Assistant Secretary.

(93120.)

COLLECTOR OF CUSTOMS, *Duluth, Minn.*

(T. D. 36040.)

Beer—Outage allowance.

Appeal directed from decision of the Board of United States General Appraisers of November 12, 1915, G. A. 7811 (T. D. 35881), involving dutiable quantity of beer imported in barrels.

TREASURY DEPARTMENT, *January 5, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 31st ultimo, inviting attention to the decision of the Board of the United

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States General Appraisers of November 12, 1915, G. A. 7811 (T. D. 35881), involving the dutiable quantity of imported beer, wherein it was held that an outage allowance of 1 per cent of the branded capacity of the barrel should be made.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(57773.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36041.)

Olive oil—Tare of tins.

The weight of tins and oil from certain Italian shippers published for information of customs officers, supplementing T. D. 35746.

TREASURY DEPARTMENT, *January 6, 1916.*

To collectors and other officers of the customs:

Supplementing the schedule of tares of olive oil in tins contained in T. D. 35746, the weight of tins and oils from certain enumerated shippers in Italy is hereby published for the information of customs officers, and should be used in connection with the specified brands of olive oil from the shippers named.

(48555.) ANDREW J. PETERS, *Assistant Secretary.*

Place.	Shipper.	Brand.	Tins per case.		Weight of tins and oil per case.		Actual tare, 1 tin.	
			Number.	Size.				
					Lbs.	*Oz.*	*Lbs.*	*Oz.*
Oneglia	P. Sasso e Figli	Roccos	12	1	97	9½	1 1	21/32
			24	½	99	14		9 27/64
			48	¼	103	14½		6 3/64
			96	⅛	113	15		4 13/16
Do	Fratelli Calvo	Mariana	12	1	97	3		13 7/8
			24	½	98	6		9 7/16
			48	¼	101	13		5 15/16
			96	⅛	107	8		3 15/16
Robbio	Layzaro Guerci	Oneglia	10	1	86	2	1	2 1/32
			20	½	90	0		11 19/32
			40	¼	93	4		6 5/32
Oneglia	Fratelli Calvo	Vittoria	2	5	83	5	3	[1] 8

[1] Faucets.

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(T. D. 36042.)

Tiles.

Appeal directed from decision of the Board of United States General Appraisers of November 17, 1915, G. A. 7813 (T. D. 35895), involving the classification of certain red ferrolite flooring tiles.

TREASURY DEPARTMENT, *January 6, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 28th ultimo, inviting attention to the decision of the Board of United States General Appraisers of November 17, 1915, G. A. 7813 (T. D. 35895), wherein certain red ferrolite flooring tiles which had been assessed for duty at the rate of 5 cents per square foot as semivitrified tiles under paragraph 72 of the tariff act of 1913 were held by the board to be dutiable as tiles, plain, unglazed, one color, exceeding 2 square inches in size, at the rate of 1½ cents per square foot under the same paragraph.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(92417.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36043.)

Sale of blank forms.

TREASURY DEPARTMENT, *January 8, 1916.*

To collectors and other officers of the customs:

On and after February 1, 1916, all blanks now included in the list of forms for sale, or which may hereafter be included in such list, will be sold at the rate of two for 1 cent. The proceeds from the sale of such blanks will be deposited in the United States Treasury as a repayment to the appropriation, "Printing and binding, Treasury allotment," to reimburse the Government for the cost of printing, distribution, and sale. The amounts received and deposited will be taken up in the collector's account current.

Collectors are hereby directed to prepare, at the close of business on January 31, 1916, an accurate inventory of all blanks for sale on hand in their respective districts, and to reprice the blanks on the basis of this inventory. A copy of the inventory, giving the catalogue number and quantity on hand of each form, must be sent to the Secretary of the Treasury, Division of Printing and Stationery, not later than February 10, 1916. No blanks for sale will be shipped from

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the Division of Printing and Stationery during the last week in January, 1916, and blanks received after February 1, 1916, should not be included in the inventory. All blanks shipped on and after February 1, 1916, will be invoiced under the new schedule.

Collectors will return to the Secretary of the Treasury, Division of Printing and Stationery, all forms customs Cat. No. 7525, except the latest issue, accompanied by a letter of transmittal. The collectors' accounts will be credited with all blanks returned at the same rate at which they were originally charged.

ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36044.)

Drawback on canned fruits.

T. D. 35789 extended to provide for drawback on canned fruits manufactured by various firms.

TREASURY DEPARTMENT, *January 8, 1916.*

SIR: The department's regulations of October 18, 1915 (T. D. 35789), providing for the payment of drawback on canned fruits manufactured by H. G. Prince & Co., of Fruitvale, Cal., with the use of imported refined sugar or refined sugar produced in whole or in part from imported raw sugar, are hereby extended to cover canned fruits manufactured by the California Fruit Canners' Association (Inc.), of San Francisco, Cal.; the Pratt-Low Preserving Co., of Santa Clara, Cal.; the California Canneries Co., of San Francisco, Cal.; the Pacific Coast Canning Co., of Oakland, Cal.; the J. H. Flickinger Co., of San Jose, Cal.; the Oregon Packing Co., of Portland, Oreg.; the D. Di Fiore Canning Co., of San Jose, Cal.; the Golden Gate Packing Co., of San Jose, Cal.; the Central California Canneries, of San Francisco, Cal.; and the Bayside Canning Co., of Alviso, Cal., with the use of imported refined sugar or refined sugar produced in whole or in part from imported raw sugar.

Respectfully, ANDREW J. PETERS,
(103746-8.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

(T. D. 36045.)

Malt extract.

Appeal directed from decision of the Board of United States General Appraisers of November 17, 1915, G. A. 7814 (T. D. 35896), involving the classification of certain malt extract.

TREASURY DEPARTMENT, *January 10, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 4th instant, inviting attention to the decision of the Board of United

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States General Appraisers of November 17, 1915, G. A. 7814 (T. D. 35896), wherein certain malt extract which had been assessed with duty at 45 per cent ad valorem under the provision of paragraph 246 of the tariff act of 1913, for "malt extract, * * * solid or condensed," was held by the board to be dutiable at the rate of 45 cents per gallon under the provision of the same paragraph for "malt extract, fluid, * * * in bottles or jugs."

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(101382.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36046—G. A. 7837.)

Appraiser's report—Evidence.

1. Under the act of 1913 the facts recited in an appraiser's report, if adopted by the collector in his certificate to the board, must be taken as true in the absence of other evidence even if such appraiser's report is made more than 30 days after the filing of the protest.

2. The citizen importing goods may submit his case upon the facts found by (or incorporated by apt reference into) the certificate of the collector forwarding the papers to the Board of General Appraisers, and upon those admitted facts obtain a ruling upon the question of law involved in classifying his goods.

3. A customs regulation directing the procedure to be followed by the collector in reviewing his decision on protest can neither curtail nor enlarge the jurisdiction of the Board of General Appraisers, nor affect in any way the value as evidence of any of the official papers which the collector in his certificate to the board incorporates in (or by apt reference makes a part of) his decision on the classification.

4. Any legal presumption of correctness attaching to official action must include a presumption in favor of the truth of the facts stated by the official to be the basis of his action.

United States General Appraisers, New York, January 3, 1916.

In the matter of protest 747409 of Francois Coste against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Thaddeus S. Sharretts for the importer.

Bert Hanson, Assistant Attorney General, for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers, MCCLELLAND, G. A., and SULLIVAN, G. A., concurring).

BROWN, *General Appraiser:* The merchandise is stated by the appraiser in his report to consist of dress goods composed of silk, metal threads, and wool, silk chief value. It was classified as wool dress

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goods at 44 cents per pound and 55 per cent ad valorem under paragraph 381, act of 1909, by virtue of paragraph 310, act of 1913. Various claims are made in the protest, but the claim relied on is under paragraph 318 of the act of 1913 at 45 per cent as woven fabrics of which silk is the component material of chief value.

The collector in his certificate of transmittal states:

The assessment of duty protested against was made in accordance with the return of the appraiser on the invoice as stated in his special report herewith.

The report of the appraiser, which is thus adopted by the collector, is dated May 4, 1914, while the protest is marked "Received March 20, 1914, customhouse, New York." Thus said report was dated more than 30 days after the receipt of the protest.

In the act of 1913 Congress modified, in important particulars, the provisions of the preexisting law governing the filing of protests. The time for filing was changed from 15 to 30 days after liquidation, a new charge, called a protest fee, was instituted, and the importer was given 30 days after filing the protest within which to perfect it by paying said fee.

Previously, from the time of the passage of the customs administrative act of 1890, an appraiser's report made in answer to a protest had, by uniform practice, been considered by all the parties litigant and by all the courts as part of the record in customs cases and the facts stated therein, in the absence of other evidence, conclusively determined the character of the merchandise. The decision of the Court of Customs Appeals, in the case of National Hat Pin Co. *v.* United States (5 Ct. Cust. Appls., 435; T. D. 34971), decided November 27, 1914, reversed this long-continued practice and held that, by reason of a customs regulation (art. 1073, Customs Regulations of 1908), such answer, if made before 30 days had expired from the time the protest was filed, became a part of the collector's decision, and the facts stated therein (in the absence of other evidence) were conclusive upon the courts in deciding the classification; but, on the other hand, if said appraiser's report happened to be filed after said 30 days it became waste paper and of no force or effect.

This distinction was the settled law controlling this board under the act of 1909, by reason of said case of the National Hat Pin Co. *v.* United States and of the following case of Tower Manufacturing and Novelty Co. *v.* United States (6 Ct. Cust. Appls., —; T. D. 35478). However, in the latter decision the Court of Customs Appeals disclaimed any intention of applying said technical rule to the new and radically different language of the act of 1913 in the following statement (reported on p. 967 of vol. 28 of Treasury Decisions):

It has been called to our attention in the argument that in the tariff act of 1913 Congress has added several new provisions to the administrative act in relation to protests, and it is argued that these provisions will render the appli-

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cation of the foregoing rule impracticable or at times impossible. It may be the case that these provisions will be supplemented by new regulations of the department. Inasmuch, however, as such new provisions are not involved in this case we are not called upon to apply them to the present issue.

The above language makes it plain that nothing heretofore decided bears any necessary relation to or has any effect upon the determination of the issue involved in this case as to when an appraiser's report is evidence under the act of 1913. And in this connection the court's remark about the possibility of new regulations seems to suggest at the outset that the old regulation does not apply to the act of 1913.

In this state of the law we will therefore consider the question *de novo*, as a case of first impression, involving the proposition as to whether, under the act of 1913, the customs officials may have a report made in answer to the protest of the importer, stating the facts upon which the collector has made his decision on classification, followed by a report to the board stating such findings as explanatory of his (the collector's) action, and then the facts, thus formally found, may be ignored and a decision against the importer had, in contravention of those very facts thus formally stated, and the importer defaulted simply because this official report does not bear a certain date.

For instance, the finding here must be based on the facts found by the appraiser and adopted by the collector when he says that these goods are composed of silk, metal threads, and wool, silk chief value. If those facts can not be considered, although admitted by the Government officials to be true, the protest would have to be overruled for lack of evidence, when the importer, in our opinion, clearly had a right to rely upon those facts so found.

In the case of Lehigh Manufacturing Co. *v.* United States (153 Fed., 596; T. D. 28055), decided February 28, 1907, Judge Holland ruled that both the board and the court must make a classification on the facts as they appeared in the certificate of the collector. Clearly, then, if the collector certifies that his decision is based on the facts stated by the appraiser, it is just as if his own decision had set out in detail the facts so found, and it would be superfluous for the importer to prove facts already admitted by the other side. Judge Holland, in that case, said:

It is urged by the Government in this case that the court should dismiss the appeal, because no evidence was taken at all before the Board of General Appraisers or on the appeal. The importer, however, insists that sufficient facts appear in the certificate of the collector to enable the board and the court to pass upon the questions involved, and he is entitled to be heard. In this view we think the importer is right. If he concludes that his case can be properly heard without any evidence, there is nothing in the law to prevent him from submitting it in that form.

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The so-called answer to protest, or the paper that is officially known as the appraiser's report, is merely a detailed explanatory statement of the facts found when the appraiser made his original return in red ink on the invoice upon which the collector acted in arriving at his (original) decision. When the collector forwards to the board, along with the other papers, this so-called answer, or appraiser's report, and notes on the back of the protest—

Respectfully referred to the Board of United States General Appraisers for decision.

The assessment of duty protested against was made in accordance with the return of the appraiser on the invoice, as stated in his special report herewith—

he adopts the statement of facts in the special explanatory report as being the facts on which he relied when he considered the advisory return on the invoice and reached his first (original) decision on the classification.

The legal effect is the same as if, instead of making such reference to the report, he had repeated over again, word for word, the facts stated therein and stated that on those facts he found the classification.

This reference to another paper was merely an administrative short cut to save time and was a condensed method of explaining his decision and the facts on which he relies, and it is nothing to the point whether he says "I find such and such facts," or "I rely upon facts stated in some other paper," which he files. Here, he said, in effect, when he referred the papers to the board, "I find that this merchandise described on the invoice as all silk yarn, dyed, etc., consists of dress goods, composed of silk, metal threads, and wool, silk chief value, which I assessed on those facts 'in accordance with the orginal return of the appraiser on the invoice, as stated in his special report herewith.'"

Nor is it to the point that the appraiser has nothing to do with the classification of merchandise, for the collector has him make an explanatory statement and makes that explanatory statement a part of his own decision.

The presumption in favor of the collector's decision must therefore include, not only the result of the decision itself, but also the facts upon which it is based thus clearly stated in his report to the board.

It is nowhere denied that findings of fact stated by the appraiser by his red-ink notations on the invoice, which are subsequently adopted by the collector in his decision, are conclusive in the absence of other evidence and determine the classification. Therefore, it would necessarily follow that an explanatory report stating the facts in more detail, and referred to by the collector in his report to the board as the basis of his decision, would revert back to the time of

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the original return, and, by necessity, become a part of the collector's decision, as much as the red-ink notations themselves. And this irrespective of the time when such explanatory reports should be filed, or by whom such reports are made, *if so adopted by the collector as the proper explanation of his decision.*

Judge Martin, delivering the opinion of the court in the case of United States *v.* Neuman & Schwiers Co. (6 Ct. Cust. Appls., —; T. D. 35467), a case arising under the act of 1913, decided that the appraiser's official answer to the protest may be assumed by the court to be identical with the advisory return of that officer, and proceeded to make a classification upon the facts stated therein.

This conclusively establishes the proposition above stated, that an appraiser's report is merely explanatory of the original return by the appraiser, and, of necessity, counts back to the time of said original return.

To hold that a presumption of fact against the importer from the mere act of classification itself is, in the absence of evidence to the contrary, conclusive, and to deny a presumption in favor of the facts stated by the appraiser's report, which are the facts the collector says he relied upon in making the classification, would require us to presume facts to be untrue which the collector has stated were true and were the reasons why he so decided.

We can not presume that the collector found facts which he expressly says in his official report to the board that he *did not find.*

In this case, to correctly classify the goods under paragraph 381 (as against the paragraph claimed under) the collector would have to find they were "not in chief value of silk." But he says as a matter of fact that on the advice of the appraiser he did actually find, as stated in the answer to the protest, that they consisted of "silk, metal threads, and wool, *silk chief value.*"

A presumption in favor of official action as against the very facts upon which that action was officially based would be indeed unwarranted.

During the period of 25 years when the facts stated in appraisers' reports were held to be controlling (in the absence of other evidence) this was true because they became so by incorporation into the collector's decision by the certificate of his findings made to the board, although of course said reports were always made by way of answer to the protest, long after the collector's original ruling which the protest disputed.

But there is neither logic nor common sense in holding under the terms of the act of 1913 (however we may be precluded under the recent decisions dealing with the act of 1909) that a citizen's rights, settled in his favor by the facts stated in an appraiser's report adopted by the collector, if made on the twenty-ninth day should be

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entirely lost if said report by accident or otherwise was not filed until the thirty-first day.

Nor could any customs regulations, passed for convenience of administration within the department itself directing how long or how short a time the collector could take in deciding whether he should adhere to his original classification or reliquidate in accordance with the protest, have any possible effect either on the jurisdiction of the collector, as prescribed by statute, or upon the jurisdiction of the Board of General Appraisers, also prescribed by statute, or cause the facts stated in the appraiser's report to be presumptive evidence in favor of the importer in one case and of no effect in another case because such paper may have been filed before or after the time fixed by such administrative regulation for the review by the collector of his decision.

Therefore, even if said regulation (art. 1073) is applicable or intended to be applied to the provisions of the new act of 1913, it could have no effect upon the issue here or the conclusion reached. Moreover, in any event, such regulation could have no effect upon a case arising under the act of 1913, because it is impossible of application in many situations arising under said act. Under said act there is no valid protest requiring the collector to review his classification and to determine whether he will reliquidate or not until the protest fee is paid, and if the protest fee was paid upon the last or 30th day the collector could have no time to review.

Judge McClelland, in his careful analysis of the protest provision in the act of 1913, contained in the contingent-fee case of the Lederer Co., reported in G. A. 7547 (T. D. 34306), decided on March 20, 1914, holds that the protest does not take life or become effective until the fee is deposited as required by the statute, in the following language:

> Here we have a clear and distinct provision which unmistakably nullifies the protest in the hands of the collector if the protestant fails to pay the required fee within 30 days after it is filed. Under this provision the collector may receive the protest without the fee being simultaneously paid, but the protest does not take life and become effective as a basis for actual recovery from the Government of duties claimed to have been illegally exacted until the fee is deposited as required by the statute. In the event of the fee not being paid, the protest is of no effect and is to be deemed abandoned and the collector is not required to transmit it to the Board of General Appraisers.

Being impossible of application in a large class of cases arising under said act, the regulation must fall in toto as applied to said act.

We therefore hold, for the reasons stated, that the appraiser's report is evidence in the case before us, and, in the absence of other evidence, the facts stated therein control the classification, and we proceed to decision on the merits of the case.

In G. A. 7578 (T. D. 34600) and G. A. 7577 (T. D. 34599) we held that the effect of paragraph 310 of the act of 1913 was to continue in

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force until January 1, 1914, as part of the new act, the wool schedule of the act of 1909.

The question on the merits therefore turns on whether the classification of the merchandise as in part of wool should be sustained under paragraph 381, act of 1909, or whether, being also in chief value of silk, the principal claim in the protest should be sustained under paragraph 318 of the act of 1913. Following the principle established by the Supreme Court in Hartranft *v.* Meyer (135 U. S., 237) holding that the provision for "in chief value of" controlled over that for "in part of" the protest is sustained.

CONCURRING OPINION.

McCLELLAND, *General Appraiser:* In this case as submitted the question of whether the protestants shall succeed depends upon whether the special report of the United States appraiser, made on the protest at the collector's request, shall be considered as one of the official papers, or a part of the collector's letter, upon which the protest is submitted for decision.

Even if it be assumed that the Secretary of the Treasury was vested with power to fix the 30-day limitation within which the collector should transmit a protest to the Board of General Appraisers, as provided in article 1073 of the Treasury regulations of 1908, the provision was, in my opinion, directory rather than mandatory, and therefore the failure of the collector to comply with it could not be held to deprive the protestant of his statutory right, nor might its provisions be held to be a bar to the collector stating in his letter of transmittal in detail after the expiration of 30 days from filing of the protest any fact or facts to show that his decision protested against had been erroneously made. And even if it were held that this regulation was made and promulgated within the scope of the Secretary's authority, and that under the customs administrative act, as it then stood, the 30-day limitation was to be strictly applied, it does not follow, merely because that regulation has neither been modified nor repealed, that its provisions are effective and govern the collector's action under existing law.

As pointed out by General Appraiser Brown, the administrative feature of the tariff act was so amended in 1913 as to extend the time after the liquidation of an entry within which a protest may be filed from 15 to 30 days, and, in addition, provided for the payment of a fee of $1 on each protest; and the importer is allowed 30 days from the time of the filing of the protest within which to pay the fee. Until this fee is paid the protest does not take life or become operative for relief, for in the event of the fee not being paid within 30 days the protest is to be deemed abandoned.

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It is true that subsection N of section 3 of the tariff act of 1913 provides that upon the payment of such fee the collector shall transmit the invoice and all the papers and exhibits connected therewith to the Board of General Appraisers for due assignment and determination as provided by law. Manifestly, even if it were held that the regulation, article 1073, *supra*, was made within the scope of the Secretary's authority, and that it is still operative, compliance therewith would be a physical impossibility, for the importer may withhold the payment of the fee until the thirtieth day after the filing of the protest. It must in any event be allowed that the collector is entitled to a reasonable time after the payment of the fee to transmit the protest and all the papers connected therewith to the Board of General Appraisers.

The statute contains no provision for a special report on the protest by the United States appraiser, but the collector in harmony with a long-continued practice transmits each protest to that officer for such report, which is usually more detailed than the return on the invoice.

Duty was assessed on the merchandise covered by this protest at the rate of 44 cents per pound and 55 per cent ad valorem under paragraph 381 of the act of 1909, this paragraph being a part of the wool schedule of that act which was continued in operation until December 31, 1913, by a provision in paragraph 310 of the act of 1913. This assessment was in harmony with the advisory classification indorsed upon the invoice at the time of the original return by the appraiser.

In the special report of the appraiser, *supra*, it is stated that the merchandise consisted of dress goods composed of silk, metal threads, and wool, silk being the component material of chief value, and the collector states in his indorsement upon the protest—

> The assessment of duty protested against was made in accordance with the return of the appraiser on the invoice as stated in his special report herewith.

It is fair to assume that since the responsibility for the assessment of duty was altogether upon the collector, he had before him at the time the assessment was made all of the information set forth in the special report, which in effect he adopts and makes part of his letter of transmittal.

It surely would not be gainsaid that if the collector, instead of forwarding the special report as it came from the appraiser, had embodied in his letter exactly the statements that it contains, the board would have been warranted in accepting them as being sufficient upon which to base a finding that the merchandise in question was wool fabric of which silk was chief value and reach the conclusion that duty should have been assessed thereon at the rate of 45 per cent under paragraph 318 of the tariff act of 1913, as claimed.

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In neither the National Hat Pin case nor the Tower Manufacturing case, cited in the opinion of General Appraiser Brown, was the question of the power of the Secretary of the Treasury to place on the collector the 30-day limitation provided in article 1073, *supra*, for the transmittal of a protest raised; neither was the question raised as to whether, if valid, the regulation was mandatory or merely directory. Further, in any event, inasmuch as these two cases involved protests and reports thereon made under the tariff act of 1909, it is my view that they are not controlling in the situation here presented.

For the reasons above set forth I concur in the conclusion of General Appraiser Brown that the protest claim for duty at the rate of 45 per cent ad valorem under paragraph 318 should be sustained and the decision of the collector reversed accordingly.

CONCURRING OPINION.

SULLIVAN, *General Appraiser:* I concur in the conclusion reached by General Appraiser Brown in this protest, but as this is the first time the board is construing the effect of an appraiser's report under the act of 1913 made more than 30 days after filing of protest, I wish to express my reasons for such concurrence.

The statute relative to appraiser's reports is clear and explicit. Paragraph M of section 3 declares:

> M. That the appraiser shall revise and correct the reports of the assistant appraisers as he may judge proper, and the appraiser, or, at ports where there is no appraiser, the person acting as such, shall report to the collector his decision as to the value of the merchandise appraised. * * *

It is upon this advisory classification the collector acts. This report is made prior to liquidation and to the filing of protest. The collector is recognized by the statute as the supreme authority for the classification of merchandise. It is from his decision all appeals from rate or amount are taken; to him all revenue is paid; and he is the one officer of the customs service of the United States, who, at the source, as to rate and amount, is supreme. That he may be in error as to rate and amount is admitted. To correct such errors paragraph N of section 3 was enacted, providing in specific terms—

> N. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, * * * shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, * * * shall, within thirty days after but not before such ascertainment and liquidation of duties, * * * or within fifteen days after the payment of such fees, * * * if dissatisfied with such decision, * * * file a protest * * * with the collector, setting forth * * * his objections thereto.

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Upon the filing of this protest a review of his action may be had. The filing of the protest alone is not sufficient to challenge the action of the collector. The protestant is required to deposit a filing fee of $1 with respect to each protest. On payment the protest becomes operative. If this fee is not paid within the prescribed 30 days, the protest dies. If it is paid on the last day, the protest maintains its life, the appeal is perfected, and the jurisdiction of the collector as to subsequent proceedings ceases.

Paragraph N declares:

> Upon such payment of duties, protest, and deposit of protest fee the collector *shall transmit the invoice and all the papers and exhibits connected therewith* to the board of nine general appraisers for due assignment and determination as provided by law.

Having 30 days after the filing of the protest in which to pay the fee, the protestant may wait until the last hour of the last day. If he waits 1 day longer, his right to appeal from the collector's decision ends; but upon such payment the jurisdiction of the collector ceases, and he has but one course to follow, namely, to transmit the invoice and all the papers to the Board of General Appraisers. This statute does not recognize any other paper connected with the invoice, except those therewith at the time of the filing of the protest and the payment of the fee. There is no time allowed after perfection of the appeal in which the collector may review his action. There is nothing in the law creating the collector an appellate tribunal to review his own decisions. So clearly is it expressed that at the expiration of the 30 days the papers and invoices shall be forwarded to the Board of General Appraisers that there can not be a doubt that then the collector's jurisdiction ceases and the jurisdiction of the Board of General Appraisers attaches. Such is the holding of the Court of Customs Appeals in the Tower case (6 Ct. Cust. Appls., —; T. D. 35478) and in the Straus case (5 Ct. Cust. Appls., 147; T. D. 34193).

No regulation can change this statute. Many of the paragraphs of the tariff act of 1913 contain provisions reading, "under such rules and regulations as the Secretary of the Treasury may prescribe." Regulations issued under such authority, if within the purview of the law, have the force and effect of a statute. But we have no such condition under paragraph M or paragraph N. The paragraph expresses the law, and while regulations may be issued by the department as to the manner of transacting business under section 251 of the Revised Statutes, it can not engraft upon this statute additional legislation nor take away or add thereto any right not expressed therein.

This being the condition of affairs, what is the force and effect of an appraiser's report made after the 30 days prescribed for perfecting an appeal have expired?

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That the appraiser is authorized to make reports is unquestioned. Such authority is expressly granted in paragraph M. It is upon such reports the collector acts. How can he act upon a report received after his jurisdiction ceases? Not that this report may not have weight, but the collector can not act upon it, and it does not become part of the record.

A report made after the jurisdiction of the collector ceases may or may not be of value. Take the case at bar. The report was made more than 30 days after the filing of the protest and payment of the fee and nearly 30 days after the jurisdiction of the collector ceased. It then became in the nature of an answer by the Government to the petition of the protestant and had the force and effect of such pleading. If upon the trial of the cause the protestant on reading the appraiser's report believes it expresses facts warranting him to submit his cause thereon without the introduction of testimony or other evidence, and he accepts the description of the merchandise therein as accurate, and agrees with the facts stated—the Government not objecting—and such report is offered in evidence, then it has the force and effect of evidence as to the facts stated, and may be sufficient to satisfy the Board of General Appraisers as to the facts upon which the Government acted. It is not evidence if objection is made to its introduction; then witnesses must be called to prove the fact.

In a litigated civil case a general denial places the opposite party upon proof. If the answer goes beyond a general denial, and states facts which in the judgment of the plaintiff are evidentiary, and he either introduces the answer in evidence, or accepts it, then the court is always justified in accepting such evidentiary facts as are admitted as part of the case upon which it would be justified in rendering judgment.

It is upon this theory alone that I consider the appraiser's report competent, made after the payment of the filing fee which perfects the appeal. The weight to be given to it, of course, rests with the court.

In the case at bar the record discloses that the cause was submitted on the appraiser's report and collector's letter. There was no objection by either party to this offer. It is recognition of the fact that the appraiser's report and collector's letter were not part of the record, because made more than 30 days after the jurisdiction of the collector ceased. It was then offered in evidence, and that is the effect of a submission on the appraiser's report. Such action had the same force and effect as the offer of an exhibit or a deposition or a chemist's report. It took the place of the oral testimony of a living witness, and was an acceptance of the facts stated as proof of the contention of the parties. Then, and not till then, did it become of any force or effect. Whether this is good practice it is not for us to

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say. It would seem when the facts can be proven by the calling of witnesses it would be more satisfactory. That is a matter for the parties to consider.

This report did not aid the collector in arriving at the amount or the rate. His advice is based upon the advisory classification as to rate or value made to him prior to the time of ascertainment and liquidation of duties, and what occurred thereafter could not have effect upon the collector, nor be accepted by him, for he had lost all power to consider the case. It was the intent of the law that the collector's jurisdiction ceased when the appeal was perfected, and whether he transmitted the papers to this board or not, the cause was within the jurisdiction of the board. No other conclusion can be arrived at from a reading of the statute.

I can not agree with General Appraiser Brown that if uncontradicted the appraiser's report is conclusive evidence, and determines the character of the merchandise. If properly in evidence it is to be considered as any other fact. The board hearing the cause should have the privilege of exercising its judgment as to the weight to be given to the facts stated in the report. The samples introduced may be directly opposite to the facts stated in the report. Must the board close its eyes to this ocular fact, and blindly follow a written report that their judgment says to them is wrong? Certainly not. The presumption of correctness attaching to the act of an appraising or classifying officer is to the act and not his report. He may make no report whatever, and yet the presumption attaches. Presumptions in law are not always controlling, when a fact disclosed by a visible, physical examination disaffirms the act.

It is not necessary to consider the National Hat Pin case. We are under a new statute, whether different from that of 1909 or not is immaterial. We are construing it for the first time, and the National Hat Pin case may or may not be applicable to the present act. It seems to be without bearing now, for it is admitted that decision had reference entirely to the statute of 1909.

I have not examined carefully the difference between that statute and this, not deeming it necessary, but I have a firm conviction under the statute of 1913 the collector is ousted from performing any act with reference to the merchandise upon which he has assessed duty or fixed a rate after an appeal has been taken and perfected; that he has but one duty then to perform—to transmit the papers to the Board of General Appraisers, whose jurisdiction attaches immediately upon the filing of the protest and payment of the protest fee.

The protest in this case seems to be meritorious, and I concur in the conclusion sustaining it.

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(T. D. 36047—G. A. 7838.)

Leaf tobacco.

In changing the language defining wrapper tobacco in the tariff revision of 1913 it was not intended by Congress to fix a new standard in paragraph 182. Commercially the requirements in a leaf of tobacco to fit it for use as a wrapper are no different under the tariff act of 1913 than they were under the tariff act of 1909 and prior acts.

United States General Appraisers, New York, January 3, 1916.

In the matter of protest 776465 of St. Elmo Cigar Co. against the assessment of duty by the collector of customs at the port of Los Angeles.

[Affirmed.]

Isidore B. Dockweiler and *Frank L. Lawrence* for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Sullivan, G. A., and Brown, G. A., concurring).

McClelland, *General Appraiser:* The merchandise involved is leaf tobacco, unstemmed, imported from the island of Cuba and entered at the port of Los Angeles October 1, 1914. The entire importation was described on the invoice as "230 bales leaf tobacco, 89 bales (Rgo.) mixed fillers, and the rest all fillers."

After the original classification of this tobacco a protest was lodged by the importing company against the collector's action in assessing wrapper duty of $1.85 per pound, less 20 per cent, on the entire contents of 16 bales as wrapper tobacco, and the same rate of duty on percentages of wrapper leaves contained in 13 bales. As the result of the trial under that protest the collector's action was affirmed in board's decision reported in Abstract 37363. Subsequent to the classification by the collector of the 29 bales aforesaid, that officer reclassified 40 bales of said importation, numbered as follows: 14014, 14015, 14023, 14028, 14029, 14030, 14031, 14050, 14066, 14068, 14070, 14071, 14113, 14114, 14122, 14039, 14040, 14041, 14043, 14047, 14048, 14051, 14052, 14053, 14054, 14055, 14058, 14059, 14061, 14062, 14063, 14064, 14067, 14069, 14105, 14107, 14109, 14111, 14112, 14118, and none of these reclassified bales were involved in the above-mentioned protest, or covered by board's decision, Abstract 37363, *supra*. The contents of 15 of the bales thus reclassified were held to be full wrapper bales and 25 of them as being percentage bales.

This protest is lodged against the action of the collector in assessing wrapper duty on the entire contents of each of the 15 full wrapper bales above mentioned and on the percentages of wrapper leaves found in each of the said percentage bales numbered as follows: 14041, 15 per cent; 14043, 12 per cent; 14047, 12 per cent; 14051, 12

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per cent; 14105, 15 per cent; 14107, 15 per cent; 14109, 8 per cent; 14111, 10 per cent; 14112, 9 per cent.

Apparently no protest is made against the action of the collector in assessing the wrapper duty on the percentages of wrapper leaves found in the remainder of the 40 bales first above enumerated.

At the trial of this protest at the port of Los Angeles a large volume of testimony was taken. Men of long experience in the leaf-tobacco and cigar-making trades were called to testify as to the requisites which leaf tobacco must possess to adapt it for use in a practical and commercial way as wrappers for cigars. If these witnesses were considered simply from the standpoint of their years of experience, as detailed by themselves, it might be accepted that each of them was sufficiently expert to determine with reasonable certainty, after a prudent examination of the contents of a bale of tobacco, what percentage of the leaves contained therein were suitable for use as wrappers for cigars.

In Abstract 37363, *supra*, we said:

> It is our view, based upon the record, that the standard of size used by the witnesses for protestants to determine whether a leaf of tobacco is suitable for wrapper is arbitrarily too high and not justified by the trade requirements, experience showing that very many brands of cigars 4½ inches long are wrapped with as high-grade wrappers as are the 5-inch cigars of the same or similar brands.

This statement in that decision had for its basis the expressed opinions of the witnesses called by protestants in that case, which with striking uniformity agreed that no leaf of tobacco which was not of sufficient size, regardless of its other qualities, to wrap a 5-inch cigar was a wrapper leaf. No such theory is advanced, nor is any such contention made in the case at bar. Not only is that the fact, but the witnesses called by the importers, as well as Mr. Jarrett, a member of the importing company, agree that there is no such limitation as to size, and that therefore a leaf of tobacco having the other requisites and being of sufficient size to wrap a 4¼-inch or 4½-inch cigar is entitled to be classed as a wrapper leaf.

Mr. Jarrett, in so far as he was concerned personally, placed the responsibility for his statement of the 5-inch limitation upon a Government official named Morris Pershelsky. The following from his testimony in this connection is of interest:

> Q. (By Mr. CHAS. D. LAWRENCE.) What do you consider the size of a leaf should be for a wrapper leaf?—A. My instruction by a Government official two years ago was that the commercial size for a 5-inch cigar. However, we make 4½-inch cigars which we wrap.
>
> Q. (By Mr. DOCKWEILER.) What do you mean by Government instruction?—A. Mr. Morris Pershelsky was out here two years ago and we had a shipment of tobacco at that time held up for examination.

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Q. Who is Morris Pershelsky?—A. He was sent here from the Treasury Department, he told me, to instruct us how to invoice our tobacco; to instruct the local appraisers how to examine Havana tobacco.

Q. State what he did.

Over an objection from the Government the witness answered:

A. Mr. Pershelsky was called here; we had the tobacco held up, and Mr. Pershelsky came here and examined that car of tobacco very carefully in November, 1912. He asked me to bring down all my private papers. When I showed him the papers he asked me to come down and show him the tobacco. He looked over our invoices and our papers as he was going through the tobacco—and as he was going through the tobacco he said, "I want to show you Mr. Jarrett, this size leaf here I do not consider a wrapper. It is not large enough to cover a 5-inch Perfecto cigar." I was there while he was giving lectures—instructions to the examiner and appraisers here.

Q. Taking the ordinary 4½-inch Romeo and Juliet we have here in this market for about $12 or $13 a hundred, would you say that the tobacco used to wrap that cigar was wrapper tobacco or not?—A. Oh, yes; that is a much higher-priced tobacco than we use.

Q. So size does not cut any particular figure?—A. Not any particular figure. I never knew before Mr. Pershelsky was here. That is the reason I considered it as a standard.

Q. In that brief conversation which you had with Mr. Pershelsky did you set aside all your business experience, changing your mind that it required a wrapper that would wrap a 5-inch cigar?—A. Not changed my mind because I thought that was the standard. He told me that he was to Key West and Tampa—all over the country—examining tobacco; that was his business, special tobacco examiner for the Government. I thought what he told me was exactly so.

As to the fact of Mr. Pershelsky's presence in Los Angeles and Mr. Jarrett's statement that he was sent by the Treasury Department to give instructions as to the classification of tobacco is confirmed by the witness Mullen, an examiner in the appraiser's department at that port; but that there is disagreement between Mr. Jarrett and this witness as to what Mr. Pershelsky said as to the 5-inch limitation is indicated by the following from Mr. Mullen's testimony:

Q. What, if anything, did he say with reference to the size of the cigar to be wrapped?—A. I think that Mr. Pershelsky said 5-inch cigars is what he usually had in mind, but if the leaf was clear so it could be used from the top to the butt, all the leaves on the side sound, he would consider it would go on a 4½-inch cigar.

Not only have protestants in the presentation of their case abandoned the idea that a leaf of tobacco to be classed as a wrapper must be of size to wrap a 5-inch cigar, but the conclusion is unmistakable from the testimony of the witnesses and arguments of counsel that their claims are based upon an entirely new theory which may be thus expressed:

When Congress, in the tariff revision of 1913, substituted in paragraph 182 the words "the term wrapper tobacco as used in this section means that qual-

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ity of leaf tobacco which has the requisite color, texture, and burn, and is of a sufficient size for cigar wrappers" for the words "the term wrapper tobacco as used in this section means that quality of leaf tobacco which is suitable for cigar wrappers," used in paragraph 221 of the act of 1909, it was intended by such substitution to fix an entirely new standard for wrappers; that the words so substituted were designed by Congress to cover only wrapper tobacco imported from the island of Sumatra and were deliberately so used to exclude from classification thereunder any leaf tobacco imported from the island of Cuba.

If this were held to be the correct view of the congressional purpose in changing the language defining wrapper tobacco that would be the end of this case, all of the tobacco involved having been imported from Cuba; but this view, in my opinion, has no real basis. Had Congress intended to so legislate it would have been easy to have provided in clear and unmistakable language that only tobacco imported from the island of Sumatra should be classified as wrapper, and that no leaf tobacco the product of the island of Cuba should be so classified. That interested persons urged this view upon Congress may not be doubted, but that Congress adopted such view and intended so to legislate, I do not believe.

I think the deduction from the testimony of the witnesses in this record is warranted that commercially the requirements in a leaf of tobacco to fit it for use as wrapper are no different under the tariff act of 1913 than they were under the act of 1909 and acts prior thereto. Whether the collector was warranted in assessing the duties complained against must be gathered from the testimony of the witnesses called who were shown to have had experience in dealing in leaf tobacco and in the manufacture of cigars. Doubtless each of these witnesses belongs to, or would be willing to be placed in the class ordinarily styled "experts," but, with that thought, we are led to say that if it were to be assumed that each of them honestly expressed his individual judgment as to the character of the tobacco examined by him at least one-half of them must be of doubtful eligibility to that class.

Due appreciation of the witnesses and the weight to be given to their individual expressions of judgment without having seen and heard them testify is an impossibility.

The following tables give the names of the witnesses, the numbers of the bales examined by them, and the percentage of wrapper leaves, if any, stated to have been found in each of the bales in question. The figures indicate the percentage of leaves suitable for wrapper found in the respective bales, and the letter "F" indicates that, in the judgment of the witness, the entire contents of the bale was filler:

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Bale.	Harlson.	Lopez.	Lied.	Applefeld.	Green.	Kloeb.	Daniels.	Kohn.	Lahann.	Opp.	Steigerwald.	Diaz.	Benton.	Dresdner.	Sumek.
14014	8	F.	8	....	F.	6	2	40	60	75	48	65	65	45	90
14015	4	F.	8	F.	2	8	F.	40	90	75	60	80	70	50	88
14023	F.	F.	6	8	2	8	F.	35	50	75	60	90	55	50	96
14028	6	F.	F.	6	7	6	8	39	80	75	40	70	50	40	72
14029	8	F.	8	6	F.	6	F.	65	80	65	50	60	60	75	88
14030	4	F.	F.	10	6	4	6	60	90	65	40	65	45	65	86
14031	F.	F.	6	10	6	12	10	40	80	70	50	75	45	35	91
14066	F.	F.	....	2	F.	F.	F.	25	50	45	40	55	60	25	82
14068	2	F.	F.	F.	F.	2	F.	25	50	60	44	65	45	26	71
14070	F.	F.	F.	2	F.	F.	F.	30	80	70	50	70	55	40	72
14071	F.	F.	F.	F.	F.	F.	F.	30	80	50	40	60	30	36	65
14113	3	F.	F.	F.	F.	6	F.	33	50	60	50	75	55	30	82
14114	3	F.	F.	F.	F.	6	F.	30	75	60	44	65	55	40	92
14122	F.	F.	F.	F.	F.	4	F.	40	80	55	50	80	55	25	88
14041	F.	F.	F.	F.	F.	F.	....	25	15	30	40	60	45	25	66
14043	F.	F.	F.	F.	F.	F.	F.	12	15	15	44	60	45	15	73
14047	5	F.	3	F.	F.	F.	F.	15	40	15	50	75	40	15	70
14050	F.	F.	3	F.	F.	....	F.	25	50	45	50	60	50	22	72
14051	F.	F.	F.	F.	F.	F.	....	15	15	15	44	70	50	15	70
14107	F.	F.	F.	F.	F.	....	F.	25	51	35	35	40	50	25	82
14109	F.	F.	2	2	F.	8	F.	8	12	15	30	40	35	10	91
14111	F.	F.	F.	F.	F.	6	F.	10	12	12	40	40	30	10	92
14112	F.	F.	F.	F.	F.	8	F.	9	50	25	30	30	30	5	89
14105	3	F.	F.	6	2	....	2	25	50	35	44	55	50	25	89

The line of division between those of the witnesses called by the importers and such as were called by the Government may be readily recognized. It seems like surplusage to say that those called by the importers were from Harlson to Daniels, inclusive, and those called by the Government from Kohn to Sumek, inclusive.

Regardless of volume, I am decidedly of the opinion that the preponderance in weight and value of the testimony as a whole more than supports the collector's action. That some if not all of the importers' witnesses testifying as to the character of this tobacco have an apparently perverted notion as to what leaves of tobacco are suitable for wrapper is evident, and, accepting their own statements at their face value, this fact may be attributed to what would seem to have amounted to at least a lax administration of the law in the classification of leaf tobacco. This conviction is based upon statements of the witnesses exemplified by the following:

The witness Lied:

Q. What is the highest priced cigar that you make?—A. Two for a quarter.

Q. You make a very much larger percentage of nickel cigars than you do of the high priced?—A. No.

Q. You make more of the high-priced cigars?—A. Yes, sir.

* * * * * * *

Q. Have you ever bought in Havana any distinctly wrapper tobacco?—A. No, sir.

* * * * * * *

Q. All the tobacco that you have ever imported from Havana you considered it and entered it for customhouse purposes as filler tobacco?—A. Yes, sir.

* * * * * * *

Q. Have you ever bought any Havana wrapper tobacco in this country, distinctively wrapper?—A. No, sir.

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Q. All the Havana tobacco that you have bought in this country has been of the same grade that you bought in Cuba?—A. Yes, sir.

Q. Then you have never dealt in wrapper tobacco at all?—A. No.

Q. Well, have you dealt in tobacco of the same type and quality as the tobacco that is in the 24 bales involved in this protest?—A. Yes, sir.

Q. In other words, was the type of Havana tobacco that you bought the same as the type in these 24 bales?—A. Yes.

The witness Lopez:

Q. So that according to your judgment there is no wrapper tobacco imported from Cuba for use as wrapper in the United States?—A. Very little, if any.

* * * * * * *

Q. Would you be surprised if you knew tobacco was entered at the customhouses of the country and the higher rate of duty paid upon it voluntarily?—A. I would be very much surprised.

Q. When you were conducting your factory—that was prior to 3 or 4 years ago—what was the approximate output of your factory for a year?—A. The last year was about 8,000,000 cigars.

Q. What percentage of your 8,000,000 cigars were wrapped in Habana leaves?—A. All of them.

Q. So you wrapped 8,000,000 cigars in one year in Habana wrapper leaves and never imported any Habana wrapper tobacco?—A. No, sir.

Mr. DOCKWEILER. That is, his answer is "yes" to that, I imagine.

Q. Did you ever import any Habana wrapper leaves?—A. No, sir.

* * * * * * *

Q. Were you importing all the tobacco which you used?—A. Practically all of it; yes.

Q. Were you importing any of the No. 1 and No. 2 grade wrapper?—A. Never.

Q. But you were importing all your tobacco that you made into cigars and you were making Habana wrapped cigars, were you?—A. Yes, sir.

This witness testified that the two highest grades of wrapper leaves raised on the island of Cuba never leave the island, but are used there in the manufacture of very high grade cigars, and in this statement he was supported by several other witnesses. He further testified that all of the tobacco left, after these two highest grades are selected, consists of culls and throw-outs and is known as resagos, graded by number from 3 to 7, and that none of these resago leaves are suitable for wrapper.

Summed up, the testimony on behalf of the protestants' claims is that, notwithstanding the fact, of common knowledge, that millions of cigars of high grade are being manufactured in the United States from Habana filler and binder and wrapped with Habana leaves, no wrapper tobacco is imported into the United States from the island of Cuba, and this in spite of the fact that each of the witnesses for the importers, including the members of the importing company, could not fail to know, as dealers in tobacco and manufacturers of cigars, that great quantities of cigars of high grade are daily made at different points in the United States, of Cuban tobacco in bond, in Class VI warehouses.

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Another feature of the importers' case was the effort to show that the tobacco in question, being shade grown, even though of the requisite size of leaf and having the requisite color and burn, did not possess the requisite texture to adapt it for use as wrapper, and in support of this effort it was attempted to be shown that, while many cigars had been manufactured from this tobacco and wrapped with leaves selected therefrom, experience had demonstrated that the leaves used for wrapper were unfit therefor, and that by reason thereof many complaints had been received from customers of the importing company who had purchased such cigars, and that allowances had been made because of such complaints. It is but necessary to read the testimony of the witness Jarrett, and that of his salesman, to show how utterly wanting in merit this claim was. The brand of cigars stated to have been made from this importation of tobacco is the St. Elmo; and, while both of these witnesses stated that they had had more complaints against the St. Elmo brand than against other brands of cigars made from other importations of tobacco, it was nevertheless common to receive complaints as to all grades of cigars. And, further, it was made to appear by their own admissions that the St. Elmo cigars were wrapped indiscriminately with Habana leaves and Sumatra leaves, and that neither was able to say whether the complaints received were against cigars wrapped with Habana or Sumatra leaves. It is evident that the view of the witness Jarrett as to the unfitness of Habana tobacco for wrapper purposes is in harmony with that of the witnesses Lied and Lopez, and it is a reasonable inference from his testimony that his conviction is based upon experiences similar to theirs, for he states that his company manufactured 1,000,000 cigars in the year 1914 which were wrapped with Habana leaves, and an equal proportion in 1915. It was also shown by the testimony of an employee of the customhouse at the port of Los Angeles, having access to the official records, that from July, 1902, to December, 1914, the St. Elmo Cigar Co. had imported from the island of Cuba and entered at the port of Los Angeles 378,889 pounds of leaf tobacco, and that all of said tobacco was entered as filler, and that during all of that period wrapper duty had been collected on only 1,141 pounds which had been returned as wrapper in several so-called percentage bales.

The record in this case, in so far as it is made up of the testimony offered in support of the importers' contentions, is not one to invite confidence.

That leaf tobacco having all the requisites required by the statute to fit it for use as wrappers for cigars is imported into the United States from the Island of Cuba in large quantities there can be no doubt, and I am convinced that the 15 bales reclassified by the collec-

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tor as containing more than 15 per cent of wrapper were properly reclassified and are subject to the duty assessed.

I am also satisfied that, by a preponderance of the testimony, bales numbered 14041, 14105, 14107, and 14112 contain more than 15 per cent of wrapper leaves, and that the entire contents of such bales are therefore subject to the full wrapper duty. As to the remainder of the bales covered by the protest numbered 14043, 14047, 14051, 14109, and 14111, each contains 15 per cent of wrapper leaves and that the full wrapper duty should therefore be assessed on 15 per cent of the contents of each of said last-mentioned bales, and the filler duty assessed on 85 per cent of the contents thereof.

The protest is therefore overruled.

CONCURRING OPINION.

SULLIVAN, *General Appraiser:* I concur in the conclusion of General Appraiser McClelland in the foregoing opinion.

CONCURRING OPINION.

BROWN, *General Appraiser:* Without considering the previous importations of the St. Elmo Cigar Co., or how their tobacco had previously been entered and classified, or any facts of common knowledge concerning the general importations of Havana wrapper tobacco, or what is done or not done in class 6 warehouse, I think the weight of the testimony tends to sustain the classification made by the collector.

I therefore concur in affirming the collector's action, but dissent from the view that a finding should be made holding that bales 14041, 14105, 14107, and 14112, classified by the collector as percentage bales, should be held "subject to the full wrapper duty," or that the percentages of wrapper in the bales found by the collector to be percentage bales should be increased.

(T. D. 36048—G. A. 7839.)

Bort—Engravers' diamonds—Glaziers' diamonds.

Rough, uncut pieces of diamonds of a cheap variety that may be used for engravers' points, and sometimes for diamond drills after the points are sharpened, and commercially known as bort, are dutiable as bort under paragraph 357 of the tariff act of 1913, and not free as engravers' diamonds under paragraph 474 of the same act.

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United States General Appraisers, New York, January 7, 1916.

In the matter of protest 730349 of the S. Rose Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

John A. Kemp for the importers.

Bert Hanson, Assistant Attorney General (*John J. Mulvaney, Charles D. Lawrence*, and *Leland N. Wood*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* The appraiser in his report states as follows:

The merchandise described on the invoice as clear point for engravers consists of what is known commercially as bort and not as engravers' diamonds. It was returned for duty as bort at 10 per cent ad valorem under paragraph 357, act of October 3, 1913.

The protestant's claim is as follows:

* * * Under the existing tariff said goods are entitled to entry as engravers' diamonds free of duty under paragraph 474, act October 3, 1913, and not as bort at 10 per cent as assessed by you.

At the April term, 1914, this cause was submitted upon a rather incomplete record, the witnesses consisting of Mr. Rose, the protestant, and, on behalf of the Government, Mr. Treadwell, examiner of precious stones at the port of New York. At the hearing protestant was not represented by counsel.

Afterwards, in March, 1915, a motion was made by the inporters to reopen the case for the purpose of supplying additional testimony, and at the May term, 1915, the cause was very fully heard, protestant being represented by counsel, who has filed an elaborate and carefully prepared brief.

The question is largely one of fact. The statute under which the merchandise was classified declares:

357. Diamonds and other precious stones, rough or uncut, and not advanced in condition or value from their natural state by cleaving, splitting, cutting, or other process, whether in their natural form or broken, *and bort;* any of the foregoing not set, and diamond dust, 10 per centum ad valorem; * * *. (The italics are ours.)

It will be noticed that the term "bort" is expressly used.

The paragraph under which the protestant claims the merchandise is entitled to free entry is as follows:

474. Glaziers' and engravers' diamonds, unset, miners' diamonds.

The question for us to determine, therefore, is whether or not the merchandise in question is bort or glaziers' and engravers' diamonds.

Under the tariff act of 1909 bort was entitled to free entry under paragraph 556, reading:

556. Miners' diamonds, whether in their natural form or broken, and bort; any of the foregoing not set, and diamond dust.

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And so were glaziers' and engravers' diamonds under paragraph 555, which was as follows:

555. Diamonds and other precious stones, rough or uncut, and not advanced in condition or value from their natural state by cleaving, splitting, cutting, or other process, including glaziers' and engravers' diamonds not set.

It will be noticed that the statute of 1909, in common with the present act, classified "bort" by its specific name, but that the act of 1913 took it out of the free list and placed duty thereon at 10 per cent ad valorem, thus indicating the intent of Congress that merchandise of this class should be dutiable; and the act of 1913 followed that of 1909 by retaining as entitled to free entry "glaziers' and engravers' diamonds."

Under the act of 1909 merchandise similar to that in the case at bar was entered as bort, while under the present act it is claimed "glaziers' and engravers' diamonds."

Mr. Rose, testifying for the protestant at the original hearing, stated it was used "for engravers' points, engraving on metal and on stone," and that "goods of that character were known as engravers' points." Admitting that it may be used for other purposes, he said:

They could be used for diamond drills, may be used for cutting into brilliants, but hardly these, because they are not good enough quality for that.

We quote further from his testimony as follows:

Q. (By General Appraiser SULLIVAN.) Are they diamonds?—A. Yes, sir.

Q. Real?—A. Real diamonds. Cheap variety of diamonds. Imperfect, not fit for jewelry quality.

Q. (By Mr. WOOD.) Are they equally well adapted for diamond drills?—A. Yes; they might be used for that purpose; not quite long enough for that purpose, though.

Q. (By General Appraiser SULLIVAN.) Are they used for that purpose?—A. Sometimes they are used for that purpose, but more for engravers' points. Probably 95 per cent of that particular parcel from which they came would be used for engravers' points.

* * * * * * *

Q. (By Mr. WOOD.) Bort was on the free list in the previous act?—A. Yes, but the classifications have been rearranged to meet the tariff bill.

Q. Merchandise that was sometimes entered free as bort in the previous act?—A. All rough diamonds were free in the previous act.

Q. Goods were sometimes entered as bort?—A. That were not.

Q. That were not bort?—A. Yes, sir.

Q. Merchandise like this in question here?—A. It is possible. To my recollection we have not done so. We are rather particular, as we pride ourselves on our classifications of the goods, that they are adaptable for the purpose we sell them.

Q. I rather gathered from your testimony that possibly you had knowledge that other importers entered successfully such merchandise as bort under the previous act?—A. I allow you to conclude that from my remarks.

Q. I understood you correctly? That is the inference you intended by your testimony?—A. Yes, sir.

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This testimony was introduced for the purpose of establishing whether the merchandise in question is bort, and shows that the importer himself, for the purpose of the tariff law, at least, recognized it as such.

At the second hearing there was a diversity of opinion among protestant's witnesses as to the class to which the merchandise belonged and its use, Mr. Rose insisting that it was more valuable than bort, and that it could be used in the condition in which imported as engravers' and glaziers' points; and Dr. Kunz, gem expert for Tiffany & Co., testifying on behalf of the protestant, stated that a portion of the merchandise could not be used in its imported condition as engravers' points.

We quote the following from Dr. Kunz's testimony:

Q. Speaking of engravers' diamonds and engravers' points, are they synonymous terms?—A. Well, engravers' diamonds, sometimes the points are sharpened, but sometimes you can get a fine point that would be the result of cleavage, properly fractured down into a point; and then again, sometimes they are sharpened, ground down to a point.

* * * * * * *

Q. Exhibit 1, what would you say about that?—A. I should say those could be used for engraving purposes, for very fine lines.

* * * * * * *

Q. Are all the diamonds, from what you see there, what are known commercially as engravers' diamonds?—A. Yes, sir.

Q. And diamond point is another term?—A. It has a little point on the edge of this piece.

* * * * * * *

Cross-examination. Q. Dr. Kunz, you observe these samples in Exhibit 1 are very irregular in shape?—A. Yes, very irregular.

Q. And are they in your opinion ready for use as engravers' or glaziers' diamonds?—A. That one I looked at there is ready for and can be used for engraving purposes. That, that, take that [selecting samples]. There are some here that may be recleaved.

Dr. Kunz's information as to diamonds is very great, and he would not state that all these diamonds could be used in the condition in which imported as engravers' or glaziers' diamonds, but that some probably would require sharpening to make them suitable for engravers' points.

The witness Levine, testifying on behalf of the Government, was specific that all engravers' points have to be further manufactured in order to fit them to be used for such purpose, and that he did not recognize anything as engravers' points that had not been further manufactured in order to make engravers' points. He also stated he would not recognize any of the merchandise shown him, Exhibit A and Exhibit 1, as being now ready for use as engravers' points.

We quote as follows from his testimony:

Q. You would not recognize any of them in their present condition as being engravers' points?—A. Not ready for use.

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Q. When you speak of used, do you mean—what has to be done to it in order to make it ready for use?—A. A special point has to be put on them.

Q. Then in your opinion all the merchandise which you have seen in Exhibit A and Exhibit 1 must necessarily have further manipulaton, further pointing, in order to be made useful as engravers' points?—A. Yes, sir.

* * * * * * *

Q. You called them in their present condition engravers' points?—A. No, I did not.

Q. What did you call them?—A. I called them cleaved points, for Exhibit A, *and bort, as I said, was the general classification of the Exhibit 1* [the merchandise under consideration].

Government witness Mendes, who seemed very familiar with this class of merchandise, stated without hesitation that the merchandise in question was known as bort, and that it was not in condition to be used as glaziers' or engravers' diamonds; that engravers' diamonds in every instance required something additional to be done in order to fit them for use as such. The applicable portions of his testimony are as follows:

Q. Please look at Exhibit 1 (the merchandise in question), and state if that is what the trade recognizes as bort?—A. Well, it is bort points.

Q. It is one of the class of bort?—A. Yes, it is bort; rough diamonds.

Q. Is that what the trade has always known as bort?—A. Like that, yes.

Q. Will you please look at the Exhibit A. Do you know what that merchandise is?—A. Yes, absolutely.

Q. What is it?—A. That is a point made from crystalline diamonds, that are used commercially as brilliants, and in shaping them you get these pieces off. They are sharpened up into points or they come off that way as points, but it is not bort.

Q. Look at the Exhibit B.—A. That is a piece of bort.

Q. How do you know that is bort?— * * * A. I ought to know it after 36 years. It is a rough diamond, imperfectly crystallized diamond, too poor for anything else except as an abrasive or for mechanical purposes.

Q. How does it differ from the Exhibit A which you said was cut from diamonds?—A. Because the line of cleavage does not run, it is all interwoven, all grown together. These others, this Exhibit A, have their lines of cleavage.

* * * * * * *

Q. What are engravers' points?—A. Those are finished points. I have some I can show you. This is not engravers' diamonds, you can make engravers' diamonds out of these points. These here are engravers' diamonds; this is a hand one, and this is a machine one. This hand engravers' diamond point is one of this trimmed (Exhibit A), trimmed up to make an engravers' diamond. Those are not engravers' diamonds; they are points suitable for making into engravers' diamonds.

In describing glaziers' diamonds the witness stated:

Glaziers' diamonds are natural little diamonds. Glaziers' diamonds are natural little octagonal diamonds most perfectly crystalized, very small; there are eight points, cutting edges on which are natural edges. That is the glaziers' diamond.

Q. Having looked at Exhibits A, B, and C, state whether any of them represent engravers' diamonds?—A. Engravers' diamonds? There is no such thing as engravers' diamonds, except the manufactured article.

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He further stated they did not represent engravers' diamonds or glaziers' diamonds or miners' diamonds.

From all the facts the preponderance and weight of the evidence establishes that the merchandise in question is what is known as bort in commerce and trade, is so recognized individually by those engaged in the diamond trade, and has a specific and distinct classification as such in the commerce and trade of diamond merchants.

While bort may be used for engravers' purposes it requires manipulation or advancement. It is true there may be pieces in an invoice describing bort that can be used in the imported condition, but this record discloses that it is not the general rule. If it was, that would not be sufficient to place it in the class of engravers' and glaziers' diamonds, as the intent of Congress was to place a duty on bort, and it had reference to the bort of trade and commerce, which it removed from the free list of the tariff act of 1909.

The testimony satisfactorily establishing that the merchandise is bort, this record would not permit us to classify it as glaziers' or engravers' diamonds.

The protest is overruled and the collector's decision affirmed.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ——, and Hay.

BEFORE BOARD 1, JANUARY 5, 1916.

No. 39025.—Protest 759586 of Strobel & Wilken Co. (New York).

CANDLES FOR BIRTHDAY CAKES—TOYS.—White and colored candles about 2 inches long and three-sixteenths of an inch in diameter, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385, or as manufactures of wax at 10 per cent under paragraph 367.

Opinion by SULLIVAN, G. A. It was found that the candles in question are placed in small metal holders and used for decorating birthday cakes, and that they are also used at the Jewish festival, Rosh Hashana, and sometimes on wedding cakes or for table decorations. They were found to be used more for decorative purposes than to amuse, and not to be toys as defined by the court in Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115). G. A. 6802 (T. D. 29257) distinguished. As no proof was offered that the merchandise in question is a manufacture of wax or composed in chief value thereof, it was held dutiable as a nonenumerated manufactured article under paragraph 385. Abstract 38897 cited.

No. 39026.—Protest 787022 of Martin B. Levy & Co. (New York).

NECKLACES OF RICE PASTE BEADS—TOYS.—Necklaces composed of rice paste beads valued under 20 cents per dozen pieces, intended to be worn by children around the neck, classified as beaded articles at 50 per cent ad valorem under

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paragraph 333, tariff act of 1913, are claimed dutiable as toys at 35 per cent under paragraph 342.

Opinion by SULLIVAN, G. A. Protest overruled. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) and United States *v.* Kraemer (5 Ct. Cust. Appls., 294; T. D. 34474) followed.

No. 39027.—Protest 792045 of American Bead Co. (New York).

IMITATION PRECIOUS STONES.—A star-shaped article of colored glass or paste, with a foil back, pierced with two holes from the front to back, classified as a bead at 35 per cent ad valorem under paragraph 333, tariff act of 1913, is claimed dutiable as an imitation precious stone for use in the manufacture of jewelry at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. On the authority of Abstract 35438 (T. D. 34416) and Abstract 37001 (T. D. 34984) the item in question was held dutiable at 20 per cent under paragraph 357, as claimed.

No. 39028.—Protests 785029, etc., of Sussfeld, Lorsch & Co. (New York).

TELESCOPES—TOYS.—Certain telescopes classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 94 as telescopes.

Opinion by SULLIVAN, G. A. On the authority of Abstract 38601 the telescopes in question were held dutiable at 25 per cent under paragraph 94, as claimed.

No. 39029.—Protest 791528 of Seiz Bros. (New York).

BRASS CRUCIFIXES, NICKEL PLATED.—Merchandise returned by the appraiser as "manufactures metal—articles carried on person 60 per cent P. 356," stipulated to consist of brass crucifixes, nickel plated, is claimed dutiable at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The crucifixes in question were held dutiable according to the component material of chief value—brass—at 20 per cent under paragraph 167, as claimed.

No. 39030.—Protest 786140 of New York Merchandise Co. (New York).

BEADED BAGS.—Bags classified as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as manufactures in chief value of metal at 20 per cent under paragraph 167, tariff act of 1913, or of cotton at 30 per cent under paragraph 266.

Opinion by SULLIVAN, G. A. From the report of the analyst it was found that beads are the component material of chief value and the bags were held properly classified at 50 per cent under paragraph 333.

No. 39031.—Protest 767293 of T. D. Downing Co. (Boston).

PAINTS IN TIN BOXES—TOYS.—Paints in tin boxes classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as paints at 15 or 20 per cent under paragraph 63.

Opinion by SULLIVAN, G. A. The evidence in this case was held not to overcome the presumption of correctness of the collector's action. Protest overruled.

No. 39032.—Protest 767583-54994 of Marshall Field & Co. (Chicago).

RUBBER BALLS—TOYS.—The question in this case is whether rubber balls are dutiable as toys as classified, under paragraph 342, tariff act of 1913, or as manufactures of india rubber at 10 per cent under paragraph 368, or vulcanized india rubber at 25 per cent under paragraph 369.

Opinion by SULLIVAN, G. A. The protest was submitted upon samples without evidence to support the contention of the importers. A mere examination of the samples was held not sufficient to warrant a disturbance of the collector's action.

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No. 39033.—Protests 758698, etc., of J. D. Murray et al. (Buffalo).

CANOES—TOYS.—Miniature canoes classified as toys at 35 per cent under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of wood or bark at 15 per cent under paragraph 176.

Opinion by SULLIVAN, G. A. It was held that in a case of this kind where merchandise was classified as toys and claimed dutiable under some other paragraph, protestants must establish that the merchandise is reasonably fitted for other purposes than the amusement of children—that it is not a plaything. This was not established in this case. Protests overruled on the authority of Ilifelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115).

No. 39034.—Protest 751780 of J. T. Steeb & Co. (Seattle).

EASTER BASKETS—TOYS.—Small baskets ornamented with miniature representations of chicks, ducklings, and rabbits, known as Easter baskets, used to contain eggs or candy, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as stained baskets at 25 per cent under paragraph 175.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7790 (T. D. 36796) the baskets in question were held dutiable at 25 per cent under paragraph 175, as claimed.

No. 39035.—Protest 735412 of J. Friedenberg & Co. (New York).

MAGNETS—TOYS.—Magnets used for ascertaining the material of metal articles and for picking up small articles such as pins or small screws, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The magnets in question were found reasonably fitted for some other purpose than for use as toys. They were held dutiable at 20 per cent under paragraph 167, as claimed. Abstract 39003 cited.

No. 39036.—Protest 790608 of Lichtenstein Millinery Co. (New York).

SILK WEARING APPAREL.—Merchandise reported by the appraiser as consisting of dresses and other articles of wearing apparel composed of silk, made in part of ruching, netting, ornaments, and braids, silk chief value, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as silk wearing apparel at 50 per cent under paragrph 317.

Opinion by SULLIVAN, G. A. The wearing apparel in question was held dutiable at 50 per cent under paragraph 317 in accordance with the amended report of the appraiser.

No. 39037.—Protest 679021 of Eimer & Amend (New York).

LINDEMANN'S APPARATUS—CHEMICAL GLASSWARE.—Merchandise invoiced as "6 Lindemann's App. compl." and classified as an article composed in chief value of blown glass at 60 per cent ad valorem under paragraph 98, tariff act of 1909, is claimed dutiable as a manufacture of wood at 35 per cent under paragraph 215.

Opinion by SULLIVAN, G. A. It was found that the merchandise is composed of glass, wood, rubber, and some metal. The wooden box cost 11 marks and the glass parts 9 marks, the completed article being valued at 22 marks each. It was found to be in chief value of wood and held dutiable at 35 per cent under paragraph 215, as claimed.

No. 39038.—Protests 588023, etc., of M. J. Corbett & Co. et al. (New York and St. Louis).

JEWELRY.—It was stipulated in this case that the merchandise returned on the invoices as plated brass jewelry, silver jewelry, g. m. jewelry, brass jewelry, pins or hairpins, white metal chief value, set with imitation precious stones,

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ornaments to be worn on the person, brass chief value, set with imitation precious stones, combs, brass chief value, brass hair ornaments, comb set with imitation precious stones, white metal ornaments or hair combs, horn, metal, and celluloid set, is jewelry of the same dutiable character as that passed upon in United States *v.* Altman (6 Ct. Cust. Appls., —; T. D. 35390) and Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536).

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the jewelry in question was held dutiable at 60 per cent under paragraph 448, tariff act of 1909, rather than at 85 per cent, as classified.

No. 39039.—Protests 561514, etc., of Emrich, King & Schorsch (New York).

JEWELRY.—Merchandise classified at 85 per cent ad valorem under paragraph 448, tariff act of 1909, is claimed dutiable as jewelry at 60 per cent or as manufactures of paste or metal at 45 per cent under paragraph 109 or 199.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel it was found that certain items were dutiable as jewelry at 60 per cent under paragraph 448, on the authority of United States *v.* Cohn (3 Ct. Cust. Appls., 273; T. D. 32571), Guthman *v.* United States (3 Ct. Cust. Appls., 286; T. D. 32574), Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536), Abstract 35807 (T. D. 34548), Abstract 36105 (T. D. 34652), and United States *v.* Altman (6 Ct. Cust. Appls., —; T. D. 35390), and that jet jewelry classified at 60 per cent under paragraph 448 is dutiable at 45 per cent under paragraph 109 or 199 on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

BEFORE BOARD 3, JANUARY 5, 1916.

No. 39040.—Protest 786497 of F. L. Roberts & Co. (Boston).

ANIMALS FOR BREEDING PURPOSES.—A horse classified under paragraph 186, tariff act of 1913, is claimed entitled to free entry as imported specially for breeding purposes under paragraph 397. Duty was assessed for the reason that the certificate of the Department of Agriculture, stating that the animal is pure bred of a recognized breed, was not filed with the collector.

Opinion by WAITE, G. A. The requisite certificate was filed with the collector after the protest had been set for hearing. This was held not to comply with the regulations of the Secretary of the Treasury. (Note T. D. 31147 and T. D. 33768.)

No. 39041.—Protest 774994 of Coroneos Bros. (Philadelphia).

GRAPE LEAVES IN TINS—VEGETABLES.—Grape leaves in a milky liquid, put up in tins hermetically sealed, classified as prepared vegetables under paragraph 200, tariff act of 1913, are claimed free of duty as a crude drug under paragraph 477, or dutiable as a drug advanced in value, at 10 per cent ad valorem under paragraph 27.

Opinion by WAITE, G. A. It was found from the testimony that the leaves are imported for the purpose of wrapping up roulades of meat while being cooked. They are said to give the meat a certain flavor; they are never eaten but are thrown away after having been used. In Abstract 736 (T. D. 25110) the same commodity was held to be a drug advanced in value. In Abstract 19794 (T. D. 29306) a protest was overruled claiming that leaves classified under paragraph 241 as prepared vegetables were free of duty under paragraph 548 as a crude inedible drug, no evidence having been furnished to show that the goods were used as a drug, but there was evidence to show they were edible. It was held in this case that the testimony does not sustain the contention of the importers. Protest overruled.

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No. 39042.—Protest 783468 of A. Olivotti & Co. (New York).

SHORTAGE.—In this case an allowance in duty is claimed on 16 plates found to be short when the case was delivered and inspected at the importer's store.

Opinion by WAITE, G. A. Some days after their entry the goods were taken to the importer's store, and the shortage is claimed to have been discovered when they were unpacked in his basement. It was not shown that the goods were not imported or delivered by the Government. Protest overruled.

No. 39043.—Protest 784177 of Neuman & Schwiers Co. (New York).

HONEY CAKES—NONENUMERATED ARTICLES.—Honey cakes reported by the appraiser as not containing chocolate, nuts, fruit, or confectionery, but considered by him to be similar to such cakes specifically provided for in paragraph 194, tariff act of 1913, classified under that paragraph, by similitude, were claimed free of duty as "biscuits, bread, or wafers," under paragraph 417, or dutiable as nonenumerated manufactured articles under paragraph 385.

Opinion by WAITE, G. A. From the report of the appraiser that the commodity is not biscuits, bread, or wafers but soft cakes to be cut in slices, it was held dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385 on the authority of United States *v.* Neuman (6 Ct. Cust. Appls., —; T. D. 35467).

No. 39044.—Protest 774928 of Wm. A. Brown & Co. (New York).

OLIVE KERNELS.—The red kernel of the olive seed unpeeled, classified as seeds not specially provided for, at 5 cents per pound, under paragraph 212, tariff act of 1913, is claimed dutiable as nuts at 1 cent per pound under paragraph 226, or as nonenumerated articles under paragraph 385.

Opinion by WAITE, G. A. It was found from the testimony that these are kernels from the pit of the ordinary olive and that they are used by Chinese in making fruit cake. They were held dutiable as nuts not specially provided for at 1 cent per pound under paragraph 226. Abstract 21230 (T. D. 29763) followed.

No. 39045.—Protest 725634 of Sherwin Williams Co. (Cleveland).

BRONZE STATUARY.—A bronze statue classified as a manufacture of metal under paragraph 199, tariff act of 1909, is claimed to be dutiable as a sculpture under paragraph 470.

Opinion by WAITE, G. A. The evidence was found insufficient to warrant classification under paragraph 470. Protest overruled.

No. 39046.—Protests 723533, etc., of Hamano Shoten et al. (Honolulu).

DRY BEANS.—Merchandise classified as beans at 45 cents per bushel under paragraph 249, tariff act of 1909, is claimed dutiable as pease at 25 cents per bushel under paragraph 262.

Opinion by WAITE, G. A. No testimony was offered and an inspection of the samples does not warrant a change in the collector's classification. Protests overruled.

(T. D. 36049.)

Melba sauce.

Appeal directed from decision of the Board of United States General Appraisers of December 2, 1915, G. A. 7825 (T. D. 35950), involving the classification of certain Melba sauce.

TREASURY DEPARTMENT, *January 10, 1916.*

SIR: I have to acknowledge your letter of the 31st ultimo, inviting attention to the decision of the Board of United States General

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Appraisers of December 2, 1915, G. A. 7825 (T. D. 35950), wherein certain Melba sauce which had been assessed with duty at the rate of 25 per cent ad valorem under the provision of paragraph 201 of the tariff act of 1913, for "sauces of all kinds, not specially provided for," was held by the board to be dutiable at the rate of 20 per cent ad valorem under the provision of paragraph 217 of the said act for "fruits of all kinds preserved or packed in sugar, or having sugar added thereto, or preserved or packed in molasses, spirits, or their own juices."

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(101503.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36050.)

Drawback on lead articles.

Drawback on various lead articles manufactured by Lehmaier, Schwartz & Co., of New York, N. Y., with the use of imported lead. Former rates revoked.

TREASURY DEPARTMENT, *January 10, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on tin foil, tea lead, bottle caps, cap metal, soft metal for steam and other packing purposes, pure lead foil, sheet lead, electrotype foil, mounted composition tin foils on paper, printed and colored foils, compound tin foil, and other similar articles manufactured by Lehmaier, Schwartz & Co., of New York, N. Y., with the use of imported pig lead.

A manufacturing record shall be kept, which will show, in the case of each lot of articles manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of imported lead used, the kind and quantity of articles produced, the net quantity of imported lead and of other materials appearing in the finished product, and the quantity and value of dross resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported lead appearing in the exported articles, as shown by the abstract from the manufacturing record, with an addition to compensate for the dross,

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the allowance for such waste to be reduced according to the quantity of imported lead which the value thereof will replace.

The sworn statement of the manufacturers, dated December 3, 1915, is transmitted herewith for filing in your office. The department's unpublished decision of October 6, 1897, and T. D. 23014 of May 3, 1909, T. D. 25543 of August 19, 1904, and T. D. 31829 of August 22, 1911, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(100958.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36051.)

Drawback on canned fruits.

Drawback on canned fruit manufactured by the Hunt Bros. Co., of San Francisco, Cal., in whole or in part with the use of imported refined sugar or refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *January 10, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on canned fruits manufactured by the Hunt Bros. Co., of San Francisco, Cal., with the use of imported refined sugar or sugar produced in whole or in part with the use of imported raw sugar, and on canned fruits manufactured by the said company with the use of such refined sugar in combination with duty-free refined sugar.

A manufacturing record shall be kept covering the operations of each day, which shall show, in the case of canned fruits of each kind and grade manufactured for exportation with benefit of drawback, the quantity of sugar sirup used, the quantity of refined sugar and the percentage of drawback or duty-paid sugar appearing therein, and the number of cans of fruit of each size produced.

Canned fruits containing wholly duty-paid or drawback sugar and those containing wholly duty-free sugar shall be stored separate and apart, and the former class of goods so tagged or marked as to indicate their character. Canned fruits manufactured with the use of duty-paid or drawback sugar in combination with duty-free sugar shall be marked to indicate the percentage of duty-paid or drawback sugar used in their manufacture or in liquidation of drawback entries. The quantity of such sugar to be taken as a basis for the allowance of drawback shall not exceed the minimum quantity used in the manufacture of any of this class of goods during the canning season.

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At the end of the manufacturing or canning season there shall be filed in your office an abstract from the above records and certificate of manufacture, which shall show the aggregate quantity and identity of imported refined sugar and the aggregate quantity and identity of refined sugar produced in whole or in part from imported raw sugar used during the manufacturing or canning season, the quantity thereof used in the manufacture of canned fruit produced with the use of wholly duty-paid or drawback sugar, the number of cans of fruit of each kind, size, and grade produced, and, separately, the aggregate quantities of sugar used in the canning of fruit of each kind, size, and grade. In the case of canned fruits produced, in part, with the use of duty-paid or drawback sugar the abstract and certificate of manufacture shall show in the case of each combination of duty-paid or drawback sugar and duty-free sugar the aggregate quantity of refined sugar and the percentage of each class of sugar used, the aggregate number of cans of fruit of each kind, size, and grade produced with the use of such combination, and, separately, the quantity of sirup used in the canning of fruit of each kind, size, and grade.

In liquidation, the allowance shall not exceed the quantity of duty-paid or drawback sugar used in the manufacture of the exported canned fruit, as shown by the abstract and certificate of manufacture prescribed above. The duty-paid or drawback sugar shall be applied to the exported canned fruits in the order of the lowest duty paid thereon or drawback accruing thereto.

The sworn statement of the manufacturers, dated Spetember 28, 1915, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(103746–3.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

(T. D. 36052.)

Drawback on metal alloys.

T. D. 35714 of September 22, 1915, extended to cover metal alloys manufactured by the Magnolia Metal Co., of New York, N. Y.

TREASURY DEPARTMENT, *January 11, 1916.*

SIR: The department's regulations of September 22, 1915 (T. D. 35714), providing for the payment of drawback on lead articles, metal alloys, etc., manufactured by the Hoyt Metal Co., of New York, N. Y., in whole or in part with the use of imported lead, antimonial lead, and antimony, are hereby extended to cover metal alloys manufactured by the Magnolia Metal Co. in whole or in part with the use of imported lead, antimonial lead, and antimony.

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The sworn statement of the manufacturers, dated November 26, 1915, is transmitted herewith for filing in your office.

T. D. 14901 of April 23, 1894, T. D. 31875 of September 20, 1911, and T. D. 32337 of March 27, 1912, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(89113.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36053.)

Drawback on electric lamps.

Drawback on electric lamps manufactured by the Interstate Electric Novelty Co., of New York, N. Y., with the use of imported glass bulbs, tubes, and filaments.

TREASURY DEPARTMENT, *January 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on electric lamps manufactured by the Interstate Electric Novelty Co., of New York, N. Y., with the use of imported glass bulbs, tubing, and filaments.

The allowance shall not exceed the quantity of imported materials of each kind used in the manufacture of the exported electric lamps, as shown by the sworn statement and schedule of the manufacturers, dated November 18, 1915, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102602.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36054.)

Triangles—Musical instruments.

Appeal directed from decision of the Board of United States General Appraisers of December 6, 1915, Abstract 38904, involving the classification of certain triangles.

TREASURY DEPARTMENT, *January 11, 1916.*

SIR: I have to acknowledge receipt of your letter of the 4th instant, inviting attention to the decision of the Board of United States General Appraisers of December 6, 1915, Abstract 38904, wherein certain triangles which had been assessed with duty as musical instruments at the rate of 35 per cent ad valorem under paragraph 373 of the tariff act of October 3, 1913, were held by the board to be dutiable as

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manufactures of metal not specially provided for at the rate of 20 per cent ad valorem under paragraph 167 of the said act.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(104476.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36055.)

Passports, surrender of.

Customs officers instructed to request all American travelers entering the United States to surrender the United States passports which they may hold.

TREASURY DEPARTMENT, *January 11, 1916.*

To collectors of customs:

At the instance of the Secretary of State, you are hereby directed to instruct boarding officers and officers assigned to the examination of passengers' baggage to request all American travelers entering the United States to deliver up to them the passports of this Government which said travelers may hold.

In case an American who enters this country may have a passport which has not yet expired, and which he desires to use for foreign travel before it shall have expired, he should be advised to write to the Department of State requesting its return before he proceeds abroad.

You will immediately forward direct to the Secretary of State all passports collected under these instructions.

(102574.) W. G. MCADOO, *Secretary of the Treasury.*

(T. D. 36056.)

Drawback on castor oil.

Drawback on castor oil manufactured by the Baker Castor Oil Co., of New York, N. Y., with the use of imported castor beans.

TREASURY DEPARTMENT, *January 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on castor oil manufactured by the Baker Castor Oil Co., of New York, N. Y., with the use of imported castor beans.

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A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated December 3, 1915, transmitted herewith, which will show the quantities and identity of imported castor beans used, the quantities of No. 1 and No. 3 castor oil obtained, and the quantities of castor pomace resulting. At the end of each manufacturing period, which shall not exceed six months in duration, there shall be filed a sworn abstract from such manufacturing record and certificate of manufacture showing the total quantity, value, and identity of imported castor beans used during the period, the total quantity and value of No. 1 castor oil, and the total quantity and value of No. 3 castor oil obtained, and the total quantity and value of castor pomace resulting during the manufacturing period.

In liquidation, the duties paid on the imported castor beans shall be distributed between the principal products, No. 1, castor oil; No. 3, castor oil; and the by-product, castor pomace, according to their relative values, subject to the provision of the drawback law relating to principal products and by-products as interpreted by T. D. 33809 of October 25, 1913.

Drawback may be allowed under these regulations on castor oil exported on or after July 8, 1915.

Respectfully, ANDREW J. PETERS,
(101352.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36057.)

Drawback on fish netting.

Drawback on fish netting manufactured by the Fish Net & Twine Co., of East Haddam, Conn., with the use of imported flax twine.—T. D. 31821 of August 17, 1911, revoked.

TREASURY DEPARTMENT, *January 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on fish netting manufactured by the Fish Net & Twine Co., of East Haddam, Conn., with the use of imported flax twine.

A manufacturing record shall be kept, which shall show, in the case of each lot of fish netting manufactured for exportation with benefit of drawback, the date of manufacture thereof, the length, width, and mesh of the fish netting produced, and the quantity and identity of the imported flax twine appearing therein. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

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The allowance shall not exceed the quantity of imported flax twine appearing in the exported fish netting, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated December 4, 1915, is transmitted herewith for filing in your office.

T. D. 31821 of August 17, 1911, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(58012.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Bridgeport, Conn.*

(T. D. 36058.)

Drawback on cigarette packages.

Drawback on cigarette packages manufactured by the British-American Tobacco Co. (Ltd.), of Petersburg, Va., with the use of labels manufactured for their account by A. Hoen & Co., of Baltimore, Md., with the use of imported paper.

TREASURY DEPARTMENT, *January 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on cigarette packages manufactured by the British-American Tobacco Co. (Ltd.), at their factory located at Petersburg, Va., with the use of labels manufactured for their account by A. Hoen & Co., of Baltimore, Md., from imported paper.

A manufacturing record shall be kept by A. Hoen & Co., which shall show, in the case of each lot of imported paper received from the British-American Tobacco Co., the date of receipt thereof, the identifying marks and numbers thereon, the number of sheets and dimension of the paper contained therein, the number of printed labels obtained therefrom, and the quantity of waste resulting. A manufacturing record shall also be kept by the British-American Tobacco Co., which shall show, in the case of each lot of such labels received from A. Hoen & Co., the number of cigarette packages produced therefrom and the number destroyed in the process of manufacture. Sworn abstracts from such manufacturing records shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported paper appearing in the exported cigarette packages, plus an addition to compensate for loss in manufacture, as shown by the abstracts from the manufacturing records provided above.

The sworn statements of A. Hoen & Co. and the British-American Tobacco Co., dated November 10 and 23, 1915, respectively, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(103684.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Seattle, Wash.*

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(T. D. 36059.)

Drawback on morphine, codeine, etc.

T. D. 35888 of November 16, 1915, corrected.

TREASURY DEPARTMENT, *January 12, 1916.*

SIR: The table of equivalents in department's regulations of November 16, 1915 (T. D. 35888), which provides for the payment of drawback on morphine, codeine, etc., manufactured by the Powers-Weightman-Rosengarten Co., of Philadelphia, Pa., is hereby corrected by inserting in the last column thereof, entitled "Percentage morphine," between the figures 79.94, representing the percentage of morphine in morphine sulphate, and the figures 100 opposite codeine (alkaloid), the words "Percentage codeine," so as to indicate that the percentages stated opposite codeine preparations represent the percentage of codeine appearing in such preparations.

Respectfully, ANDREW J. PETERS,
(102387.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36060.)

Drawback on yarns, fabrics, trimmings, and braids.

T. D. 35875 of November 12, 1915, extended to cover dyed yarns exported after having been redyed in the United States.—T. D. 35965 of December 10, 1915, extended to cover imported fabrics, trimmings, and textile braids, bleached, mercerized, dyed, and redyed in the United States.

TREASURY DEPARTMENT, *January 12, 1916.*

SIR: The department's regulations of November 12, 1915 (T. D. 35875), as extended by T. D. 35906 of November 27, 1915, providing for the payment of drawback on imported yarns, bleached, mercerized, dyed, etc., in the United States, are hereby extended to cover imported dyed yarns exported after having been redyed in the United States.

The department's regulations of December 10, 1915 (T. D. 35965), providing for the payment of drawback on imported cotton piece goods, bleached, mercerized, dyed, etc., in the United States, are hereby extended to cover other fabrics, trimmings, and textile braids, bleached, mercerized, dyed, redyed, etc., in the United States.

The sworn statement of M. L. Eckstein & Co., of New York, N. Y., dated November 26, 1915, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(30255.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36061.)

Plant quarantine act—Importation of potatoes.

Collectors to be governed by the order and regulations of the Secretary of Agriculture relative to the admission of potatoes.

TREASURY DEPARTMENT, *January 12, 1916.*

To collectors and other officers of the customs:

Your attention is invited to copies of the following: (1) Regulations governing the importation of potatoes into the United States, revised December 8, 1915; (2) amendment No. 1 to the above regulations; (3) notice of lifting of quarantine order No. 11 (foreign), issued by the Department of Agriculture, which have been forwarded to you by mail, and by which you will be governed.

(92655-19.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36062.)

Plant quarantine act—Cotton waste.

Collectors informed that cotton waste is included in the definition of "cotton," and is subject to the regulations of the Department of Agriculture governing the importation of cotton lint referred to in T. D. 35486 of June 4, 1915.

TREASURY DEPARTMENT, *January 12, 1916.*

To collectors of customs:

The Secretary of Agriculture calls attention to the admission of cotton waste, in some instances containing much seed, by customs officers without restriction, under the impression that it was yarn and woven waste and could not contain seeds.

The Secretary of Agriculture states that the term "cotton" is construed to cover all cotton which has not been woven or spun or otherwise manufactured, and, therefore, includes all forms of cotton waste; that such cotton waste must comply with the rules and regulations governing the importations of cotton lint into the United States, promulgated April 27, 1915 (T. D. 35486), and that this applies to all cotton coming from foreign countries, irrespective of the country of origin.

Collectors will be governed accordingly.

(92655-19.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36063.)

Actual tare—Sugar bags.

Regulations governing the ascertainment of actual tare of sugar bags are amended so as to provide for the boiling of such bags.—T. D. 32976 modified accordingly.

TREASURY DEPARTMENT, *January 12, 1916.*

To collectors and other officers of the customs:

It has been represented to the department that the steaming of sugar bags as required by T. D. 32976 in the ascertainment of actual

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tare does not remove from the bags the saccharine matter, but instead of this substance being dissolved it is baked into the fiber of the bags and that the steaming method does not, therefore, result in thoroughly cleaning the bags as contemplated by the regulations.

The department is informed that it is the practice at New York to clean the bags by boiling and to dry them either in drying machines of the refinery or in the open air until they are thoroughly dry.

This provision of T. D. 32976 is, therefore, hereby amended to read as follows:

The bags shall be first carefully cleaned by sweeping and scraping and then weighed. They shall then be boiled or soaked in water heated to or above the boiling point for two hours or for such time as may be necessary to dissolve or detach all adhering particles of saccharine matter. The bags will then be dried for 24 hours or until all moisture is removed therefrom, when they will be again weighed.

(21074.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36064.)

Drawback on watchman's time detectors.

Drawback on watchman's time detectors manufactured by the Newman Clock Co., of New York, N. Y., and Chicago, Ill., with the use of various imported parts.

TREASURY DEPARTMENT, *January 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 886 of the Customs Regulations of 1915) on watchman's time detectors manufactured by the Newman Clock Co., of New York, N. Y., and Chicago, Ill., with the use of imported time detectors, movements, metal cases, register keys, and repair parts, in the manner described in the sworn statement of the manufacturers, dated October 1, 1915, which is transmitted herewith for filing in your office.

A manufacturing record shall be kept, which will show, in the case of each watchman's time detector manufactured for exportation with benefit of drawback, the serial number thereof and the number and identity of the imported parts of each kind appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the number of imported parts of each kind appearing in the exported watchman's time detectors, as shown by the abstract from the manufacturing record.

T. D. 22800 of February 11, 1901, and T. D. 27313 of April 26, 1906, are hereby revoked.

Respectfully, ANDREW J. PETERS,
Assistant Secretary.

(36407.)

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36065.)

Scrap metal from Cuba.

Appeal directed from decision of the Board of United States General Appraisers of December 2, 1915, Abstract 38890, involving the classification of certain scrap metal imported from Cuba.

TREASURY DEPARTMENT, *January 13, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 4th instant, inviting attention to the decision of the Board of United States General Appraisers of December 2, 1915, Abstract 38890, wherein certain scrap metal collected in and imported from Cuba was held to be entitled to a discount of 20 per cent from the regular duty under the Cuban reciprocity convention.

You are requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(100937.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36066.)

Drawback on shoes.

Drawback on shoes manufactured by A. E. Little & Co., of Lynn, Mass., with the use of imported shoe-topping cloths.—T. D. 31923 of October 19, 1911, revoked.

TREASURY DEPARTMENT, *January 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 886 of the Customs Regulations of 1915) upon ladies', misses', boys', and children's shoes, manufactured by the A. E. Little Co., of Lynn, Mass., with the use of imported woolen, satin, velvet, and other kinds of finished and unfinished shoe-topping cloths.

Each lot of imported shoe-topping cloth received from A. E. Little & Co. shall be given a lot number by the Peters Manufacturing Co., and a record shall be kept showing in the case of each such lot of imported cloth the date of receipt and lot number thereof, the identification marks thereon, the kind and number of pieces of imported cloth contained therein, the length, width, weight, and style number of each piece, and the length, width, and weight of the backed shoe-topping cloth manufactured therefrom. A similar manufacturing record shall be kept by the Firth & Foster Co. covering imported unfinished shoe-topping cloth dyed for the account

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of A. E. Little & Co. A manufacturing record shall be kept by A. E. Little & Co., which will show, in the case of each lot of shoes manufactured for exportation with benefit of drawback, the manufacturing lot number thereof, the kind, quantity, value, and identity (including the lot numbers of the dyer and backer) of the imported shoe-topping cloth used in the manufacture thereof, the number of pairs of shoes of each kind, size, and style produced, the quantity of each kind of imported cloth appearing therein, and the quantity and value of the waste resulting. Sworn abstracts from the above manufacturing records shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported shoe-topping cloth appearing in the exported shoes, with an addition to compensate for shrinkage and waste in manufacture, as shown by the abstracts from the manufacturing records, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

The sworn statements of A. E. Little & Co., the Peters Manufacturing Co., and the Firth & Foster Co., dated November 13 and 17 and December 20, 1915, are transmitted herewith for filing in your office.

T. D. 31933 of October 19, 1911, is hereby revoked.

Respectfully,

(3746.) ANDREW J. PETERS, *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36067.)

Drawback on embroidered articles.

T. D. 35738 of October 1, 1915, extended to cover additional embroidered articles manufactured by the Southern Embroidery Co., of Baltimore, Md., with the use of various imported materials.

TREASURY DEPARTMENT, *January 14, 1916.*

SIR: The department's regulations of October 1, 1915 (T. D. 35738), providing for the payment of drawback on embroidered nets manufactured by the Southern Embroidery Co., of Baltimore, Md., with the use of imported nets and twisted artificial silk produced from imported artificial silk, are hereby extended to cover other imported nets and fabrics embroidered with imported artificial silk, silk, and other threads and domestic nets and fabrics embroidered with imported silk, artificial silk, and other threads.

The sworn statement of the manufacturers, dated November 3, 1915, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,

(100804-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

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(T. D. 36068.)

Drawback on confectionery.

Drawback on confectionery manufactured by the Package Confectionery Co., of Boston, Mass., with the use of imported brown or granulated sugar or brown or granulated sugar produced in whole or in part from imported raw sugar.—T. D. 30351 of February 11, 1910, and T. D. 34791 of September 28, 1914, revoked.

TREASURY DEPARTMENT, *January 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 886 of the Customs Regulations of 1915) on confectionery manufactured by the Package Confectionery Co., of Boston, Mass., at their South Boston factory, with the use of imported brown or granulated sugar or with the use of brown or granulated sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated December 21, 1915, transmitted herewith, which will show, in the case of each lot or batch of confectionery manufactured for exportation with benefit of drawback, the lot numbers and date of manufacture thereof, the quantity and kind of confectionery produced, and the quantity, kind, and identity of the sugar appearing therein. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

The quantity of sugar which may be taken as a basis for the allowance of drawback may equal the quantity appearing in the exported article, as shown by the abstract from the manufacturing record.

T. D. 30351 of February 11, 1910, and T. D. 34791 of September 28, 1914, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(72595.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36069.)

Drawback on braids and trimmings.

Drawback on braids and trimmings manufactured by the A. Siegrist Co., of New York, N. Y., with the use of various imported materials.

TREASURY DEPARTMENT, *January 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 886 of the Customs Regulations of 1915) on braids and trimmings manufactured by the A. Siegrist Co., of New York,

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N. Y., with the use of imported artificial silk yarn, visca, artificial horsehair, tinsel thread, and lame.

A manufacturing record shall be kept, which will show, in the case of each lot of articles manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity (length, width, and weight) and kind of braid or trimmings produced, the quantity, value, and identity of each kind of imported material used in the manufacture thereof, the quantity of domestic material used, if any, the quantity of imported material of each kind appearing in the finished product, the quantity of waste of imported material resulting, and the value of such waste, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported material appearing in the exported braids and trimmings, with an addition to compensate for waste resulting in manufacture, as shown by the abstract from the manufacturing record, the allowance for such waste to be reduced according to the quantity of imported material which the value thereof will replace.

The sworn statement of the manufacturers, dated December 22, 1915, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(104335.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36070.)

Drawback on Panama hats.

T. D. 35959, of December 7, 1915, extended to cover Panama hats manufactured by the Royal Panama Hat Co., of New York, N. Y., with the use of imported Japanese and South American hat shapes.

TREASURY DEPARTMENT, *January 14, 1916.*

SIR: The department's regulations of December 7, 1915 (T. D. 35959), providing for the payment of drawback on blocked and trimmed Panama hats manufactured by Gus Van Lier, of New York, N. Y., with the use of imported crude hat bodies, are hereby extended to cover finished Panama hats manufactured by the Royal Panama Hat Co., of New York, N. Y., with the use of imported Japanese hat shapes and with the use of imported South American hat shapes after the same have been bleached for their account by the R. H. Comey Co., of Camden, N. J.

The sworn statement of the Royal Panama Hat Co., dated December 20, 1915, is transmitted herewith for the files of your office.

Respectfully, ANDREW J. PETERS,
(100877-10.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36071.)

Drawback on Sen-Sen breath perfume.

Drawback on Sen-Sen breath perfume manufactured by the American Chicle Co., of Rochester, N. Y., with the use of domestic tax-paid alcohol.—T. D. 30219 of December 21, 1909, revoked.

TREASURY DEPARTMENT, *January 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 886 of the Customs Regulations of 1915) on Sen-Sen breath perfume manufactured by the American Chicle Co., of Rochester, N. Y., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported Sen-Sen breath perfume, as shown by the sworn statement of the manufacturers, dated December 18, 1915, which is transmitted herewith for filing in your office.

Supplemental sworn schedules, showing changes in the quantity of domestic tax-paid alcohol used in the manufacture of Sen-Sen breath perfume, may be filed and upon verification of such supplemental schedules drawback may be allowed in accordance therewith.

T. D. 30219 of December 21, 1909, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(69717.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36072.)

Drawback on jams, jellies, etc.

Drawback on jams, jellies, and similar articles manufactured by Humbert & Andrews (Inc.), of Brooklyn, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.—T. D. 29033 of May 22, 1908, and T. D. 32895 of October 29, 1912, revoked.

TREASURY DEPARTMENT, *January 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 886 of the Customs Regulations of 1915) on jellies and cranberry sauce manufactured by Humbert & Andrews (Inc.), of Brooklyn, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept, which will show, in the case of each lot of articles manufactured for exportation with benefit of drawback, the quantity and character of the article produced, and the quantity and identity of the refined sugar used in the manufacture

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thereof. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as the basis for the allowance of drawback shall not exceed the quantity used in the manufacture of the exported product, as shown by the abstract from the manufacturing record, with a maximum of the quantity shown in the sworn statement of the manufacturers, dated December 10, 1915, which is transmitted herewith for the files of your office.

Supplemental sworn schedules showing changes in the quantity of refined sugar used and also covering other kinds of jams, jellies, and other similar articles may be filed, and upon verification thereof drawback may be allowed on the articles covered thereby exported on or after the date of receipt of the supplemental statement or schedule.

T. D. 29023 of May 23, 1908, and T. D. 32895 of October 29, 1912, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(103328.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36073.)

Countervailing duty on beans from Germany.

Collectors informed of method of computing countervailing duty on certain beans from Germany.

TREASURY DEPARTMENT, *January 14, 1916.*

SIR: Reference is made to your letter of the 22d ultimo relative to the rate of countervailing duty applicable upon white beans in bags from Germany.

The American consul general at Berlin has reported to the State Department as follows:

> The basis of valuation upon beans and mill products manufactured from beans is to be calculated in case of doubt according to the customs rate stipulated for beans suitable for use as fodder, such as horse beans, etc. Therefore to calculate the value of the import certificates issued upon beans it is only necessary to take the conventional or lowest tariff rate, which in the case of beans suitable for use as fodder is 1.50 marks per 100 kilograms (36 cents per 220.46 pounds), to divide the whole number of kilograms by 100, and then to multiply the quotient by 1.50 marks.

This information will enable you to compute the countervailing duty, which, under T. D. 33953, paragraph 7, is the same as the value of the German import certificate.

Respectfully, ANDREW J. PETERS,
(79855.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36074.)

Drawback on flour.

T. D. 35936 extended to cover flour manufactured by the Shane Bros. & Wilson Co., of Philadelphia, Pa., with the use of imported wheat.

TREASURY DEPARTMENT, *January 14, 1916.*

SIR: The department's regulations of December 1, 1915 (T. D. 35936), providing for the payment of drawback on flour manufactured by the Washburn-Crosby Co., of Minneapolis, Minn., in whole or in part with the use of imported wheat, is hereby extended to cover flour manufactured by the Shane Bros. & Wilson Co., of Philadelphia, Pa., with the use of imported wheat.

The sworn statement of the manufacturers, dated November 19, 1915, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(100284-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36075.)

Invoices—Commissions.

So-called commission merchants who buy merchandise and resell it to customers in the United States are not required to state on the invoice the name of the manufacturer or person from whom they buy.

TREASURY DEPARTMENT, *January 15, 1916.*

SIR: I inclose for your information a copy of a dispatch from the American consul at Nottingham England, together with a copy of a communication addressed to the consul by the Nottingham Commission Houses Association relative to the manner of invoicing goods shipped to buyers in this country.

The secretary of the Nottingham Commission Houses Association states that the members are the actual sellers; that they buy the goods in their own names, pay the manufacturers, and are alone responsible to the manufacturers for the goods they buy, and if by any chance they are not paid by their United States customers the loss is that of the shippers and not of the manufacturers, who in every case are paid by the shippers, and that the manufacturers do not know for whom the goods are intended, other than that they are for customers in the United States, and that on the other hand the purchasers in the United States do not know and are not interested in the manufacturer from whom the goods are purchased by the shippers.

From the statements of the Nottingham Commission Houses Association, the department is of the opinion that the members of that association are the actual sellers of the goods and should declare as such, and when they do so declare it is not necessary that they state in the invoices the names of the manufacturers or dealers from whom the goods were purchased by them.

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It appears, however, that a fixed rate of profit for the shipper is agreed upon with the buyer, which in most cases is 5 per cent, and is called commission. This item should be described in the invoices as profit, and not as commission, as the term "commission" is usually understood by customs officers to mean a compensation paid by the purchaser to an agent for his services. As this item of 5 per cent is not compensation for services, but a fixed item of profit, it should be so described to avoid confusion.

By direction of the Secretary.

Respectfully, ANDREW J. PETERS,
(64064.) *Assistant Secretary.*

APPRAISER OF MERCHANDISE, *New York.*

(T. D. 36076.)

Destruction of smoking opium.

Collectors instructed to suspend the destruction of smoking opium until otherwise directed.

TREASURY DEPARTMENT, *January 17, 1916.*

To collectors of customs:

You are requested to suspend the destruction of any smoking opium which may be subject to destruction pending the result of an investigation which the department is making of the question of accomplishing by conversion into some other form for public purposes the "destruction" required by law.

(90956.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 36077—G. A. 7840.)

Artificial or synthetic cryolite.

Artificial or synthetic cryolite, which is commercially known as cryolite or artificial cryolite, is properly free of duty under paragraph 468, act of 1913, providing for "cryolite, or kryolith," and is not dutiable as a chemical compound under paragraph 5.

The rule as to the classification of synthetic products stated.

United States General Appraisers, New York, January 11, 1916.

In the matter of protest 765989 of Roessler & Hasslacher Chemical Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Brooks & Brooks (*Frederick Brooks, jr.*) for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

BROWN, *General Appraiser:* The substance here involved was classified at 15 per cent under paragraph 5, act of 1913, as a chemical

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compound or mixture, and it is claimed to be synthetic cryolite and, as such, free of duty under paragraph 468 of the free list covering cryolite of kryolith.

The evidence shows that it is bought and sold as cryolite or artificial cryolite and is used for the same purpose in the arts as the real mineral cryolite is used. It is also in evidence that for about 10 or 15 years this substance has not been classified for duty by the customs officials, but admitted free. That would count back to about the time of Judge De Vries's decision in the case of Jacob J. Vollrath Manufacturing Co., reported in G. A. 5575 (T. D. 24990), holding certain artificial or synthetic cryolite free, under the identical language of the act of 1909.

The Government now claims, however, that because of an alleged difference in chemical composition of the article here involved from the chemical composition of the mineral cryolite in its natural state, it is differentiated therefrom and excluded from the purpose of Congress in passing the free-list provision; that this prevents it from being synthetic cryolite and makes it taxable under the provision for chemical compounds.

The importer insists that the alleged chemical difference is not existent, or, at least, not substantial and not clearly proven, and that therefore his claim for free entry is well founded, under the authority of Judge De Vries's ruling above referred to.

In his opinion in that case Judge De Vries said:

> The gist of the definition quoted from the Century Dictionary and the report of the chemist upon the natural and this particular merchandise is to the effect that the natural cryolite and this artificial cryolite are the same chemical compound, to wit, a combination in each instance of fluoride of aluminum and sodium.
>
> We find that the chemical compound the subject of this protest is the same in material and substance as the natural cryolite.
>
> * * * * * * *
>
> It is the same article in all substantial respects, differing solely as to the method of its production; it has the same component materials, nature having been copied by art or industry in combining the original materials so as to form a product identical with the natural. While it is known, therefore, as artificial kryolith, it is, in fact, cryolite or kryolith, and the force of the word "artificial" is attached solely to indicate its source of production. The material is the same and the use is the same—the article is the same.

In customs law there are two conditions under which one substance or article can be classified under the name and rate governing another substance or article:

First. If it is known in the trade and commerce of the United States by the name and designation of the other substance, under the ancient rule established by Judge Story in the Bohea tea case (9 Wheat., 428). And when this is so, and the requirements of the rule are complied with, the chemical composition, or whether it is a

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mixed or simple substance, can have nothing to do with the case. In other words, its composition and make-up can make no difference in the classification.

Second. When without any question of commercial nomenclature or trade usage being involved, an article which, although produced artificially, is the same in substance and composition as another article, the so-called synthetic article, irrespective of its origin or process of manufacture, is entitled to the same classification as the natural product, because it is in fact the same thing.

In practical application to actual cases the two rules are often confused, for the reason that a so-called synthetic article is often also known in trade by the same name as the natural or real article, and the artificial article is bought and sold as and for the natural, the purchaser not necessarily being aware that he is dealing with a synthetic substitute.

In the case at bar, however, the evidence is clear that the substance here involved is dealt with in the trade and commerce of the United States as cryolite or artificial cryolite, and it is, therefore, entitled to classification as such, irrespective of the fact that it may or may not be exactly the same chemical substance as the natural cryolite, which fact, in view of the commercial usage, it becomes unnecessary to decide.

The protest is therefore sustained.

(T. D. 36078—G. A. 7841.)

Ship's equipment.

1. Ship's Equipment—Wireless Apparatus.

Wireless apparatus, imported for use upon vessels owned by the United States or operated under American registry, entered and installed under the conditions prescribed by the Secretary of the Treasury, is not dutiable under paragraph 167, as assessed, but is free of duty under the provisions of subsections 5 and 6 of paragraph J of section 4, tariff act of 1913.

2. Construction of a Statute—Doubtful Meaning.

It is the duty of this board and the courts in construing a statute so to construe it that its administration will effect the purpose which Congress had in view in enacting it, and this purpose should, if possible, be ascertained from the language of the statute itself; but wherever there is a doubt as to the meaning of a revenue statute, that doubt should always be resolved in favor of the taxpayer.—Jules Matagrin's case, G. A. 7015 (T. D. 30571); Powers *v.* Barney (5 Blatch., 202; 19 Fed. Cas., 1234); United States *v.* Wigglesworth (2 Story, 369; 28 Fed. Cas., 595); Hartranft *v.* Wiegmann (121 U. S., 609).

3. Subsections 5 and 6 of Paragraph J of Section 4, Scope of.

Subsections 5 and 6 of paragraph J of section 4 were intended to cover and provide for the free entry of all articles of foreign production that are

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needed in the building, equipment, and repair of vessels, owned or used by the United States, or vessels bearing United States registry.

United States General Appraisers, New York, January 12, 1916.

In the matter of protests 779326, etc., of Kennedy & Moon against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Gerry & Wakefield (*Edwin R. Wakefield*) for the importer.

Bert Hanson, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* These are protests against the assessment of duty under paragraph 167 of the tariff act of 1913 on certain wireless apparatus which was installed on vessels owned by the United States or operating under United States registry. The protests claim free entry under subsections 5 and 6 of paragraph J of section 4 of the tariff act of 1913. These provisions of law read as follows:

SUBSEC. 5. That all materials of foreign production which may be necessary for the construction of naval vessels or other vessels of the United States, vessels built in the United States for foreign account and ownership, or for the purpose of being employed in the foreign or domestic trade, and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment, may be imported in bond under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purposes no duty shall be paid thereon.

SUBSEC. 6. That all articles of foreign production needed for the repair of naval vessels of, or other vessels owned or used by, the United States and vessels now or hereafter registered under the laws of the United States may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe.

It is admitted that the regulations made by the Secretary of the Treasury for the administration of these provisions of the law have been complied with, and the collector in his report states in substance that free entry was denied because the wireless apparatus was installed in old boats and therefore excluded from the free privileges of subsections 5 and 6.

The wireless apparatus in question consisted of a complete apparatus for radio communication such as is required by the act of July 23, 1912, excepting the wiring and the halyards. The apparatus was placed in the steamships *Ancon*, *Cristobal*, *Panama*, *Colon*, *Allianca*, and the *Advance*. The *Ancon*, *Cristobal*, *Colon*, and *Panama* are owned by the Government of the United States, and the *Allianca* and the *Advance* are owned by the Panama Railway Co., the stock of which is owned by the United States. The apparatus in question was placed in the various vessels to take the place of other apparatus in said vessels of a similar character, which the testimony shows did not give good results. While various questions are elaborately discussed by the Assistant Attorney General in his brief, there seems to us in this case to be the single question

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as to whether or not the wireless apparatus in question is entitled to be entered free of duty under the provisions of subsection 5 or subsection 6, or both of them, for the claim is made for free entry under each of the subsections in question.

It is the duty of this board and of the courts in construing a statute, so to construe it that in its administration it will effect the purpose which Congress had in view in enacting it, and this purpose should, if possible, be ascertained from the language of the statute itself; but, wherever there is a doubt as to the meaning of a revenue statute, that doubt should always be resolved in favor of the taxpayer. Jules Matagrin's case, G. A. 7015 (T. D. 30571); Powers *v.* Barney (5 Blatch., 202; 19 Fed. Cas., 1234); United States *v.* Wigglesworth (2 Story, 369; 28 Fed. Cas., 595); Hartranft *v.* Wiegmann (121 U. S., 609). It is easy in examining a law for the human mind to spin theories that would render almost all legislation innocuous, but it is not difficult, if approached in the right way, to find from most or all of the legislation of Congress the definite purpose that it was intended to accomplish. Subsection 5 provides for the free importation, under certain conditions therein stated, of "all materials of foreign production which may be necessary for the construction of naval vessels or other vessels of the United States * * * and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment." It is not at all clear under the liberal construction of this section which in our judgment all such laws should receive, that articles for the outfit and equipment of an old vessel are not included. Subsection 6, however, was evidently intended to supplement subsection 5, as the two together are intended, in our judgment, to cover and provide for the free entry of all articles of foreign production that are needed in the building, equipment, and repair of vessels, owned or used by the United States, or vessels bearing United States registry.

The vessels into which the apparatus which is the subject of these protests was placed, are vessels owned by the United States and registered under the laws of the United States. The apparatus was as much a necessary part of the vessels as their boilers and engines, for without such apparatus they had no right upon the ocean. The testimony shows that the vessels had been equipped with such apparatus and that it did not work well; hence it was necessary to put in a new one. This, we think, makes the apparatus stand in exactly the same relation as if a new boiler had been installed in each of the vessels, for the reason that the old boiler leaked or did not produce satisfactory results. The facts in the case seem to us to bring the importations squarely within the provisions of subsections 5 and 6 of paragraph J of section 4.

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The protests are therefore sustained and the collector directed to reliquidate the entries accordingly.

(T. D. 36079—G. A. 7842.)

Entireties—Leather cases containing metal articles, etc.

(1) Merchandise known in the trade as vanity cases, pocket toilets, or pocket sets, each consisting of an outer case of leather with a metal clasp, containing a metal nail file, a small mirror with metal back and frame, a metal-covered book of tissue paper covered with face powder, a glass perfume flask with metal cap, also, in some cases in addition a pair of small scissors and a metal-backed rubber comb, metal being the component material of chief value in each entirety, is not dutiable under paragraph 356 of the tariff act of 1913, as "articles valued above 20 cents per dozen pieces, designed to be worn on apparel or carried on or about or attached to the person, such as * * * combs, * * * vanity cases, and like articles, all * * * composed of metal," but under paragraph 360 as "bags, * * * satchels, * * * pocketbooks, * * * portfolios, * * * and other boxes and cases, made wholly or in chief value of leather, * * * permanently fitted and furnished with traveling * * * and similar sets."

(2) Similar articles, but smaller, known in the trade as pocket sets, pocket toilets, and pocket companions, consisting of small leather cases fastened by metal clasps or leather bands, some of which contain a small pair of scissors, a pencil in metal case, a penknife or eraser knife, and a nail file; others, a knife and pencil in a metal case; and one, only a pair of scissors with a folding handle; also, articles known as desk sets, consisting of a long pair of shears and a letter opener in a leather scabbard, metal being the component material of chief value in all of these entireties, are dutiable as manufactures of metal under paragraph 167 at either 20 or 50 per cent ad valorem, and not under the above-quoted clause of paragraph 356.—United States *v.* Cross (4 Ct. Cust. Appls., 274; T. D. 33489) followed.

(3) The provision in paragraph 356 for vanity cases and like articles refers to vanity cases and like articles which in themselves are composed of metal or in chief value of metal, not to vanity cases of leather, notwithstanding the fact that the metal contents of such leather vanity cases render the entirety in chief value of metal.

(4) The fact that the board has previously held some of the contents of the merchandise in question dutiable under paragraph 356 is not to be considered as a precedent for classifying these entireties under that paragraph.

United States General Appraisers, New York, January 13, 1916.

In the matter of protests 764101, etc., of John D. Gluck & Son *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Comstock & Washburn (*Henry J. Rode*) for the importer.

Bert Hanson, Assistant Attorney General (*Leland N. Wood* and *Luke Lamb*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* The merchandise in question consists of the following:

(1) A leather case, fastened by a metal clasp, containing a metal nail file, a small mirror with a metal back and frame, a book with

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metal covers holding sheets of tissue paper covered with face powder, and a glass perfume flask having a glass stopper attached to a glass rod or dropper with a metal cap or cover fitting over one end of the same. (Exhibit 1, item 3017.)

(2) A similar article, but somewhat larger and more elaborate, containing besides the above articles a pair of small scissors and a metal-backed rubber comb. (Exhibit 2, item 3018.)

These two articles are invoiced as "pocket toilets, leather."

(3) Small leather cases, fastened by metal clasps or leather bands, some of which contain a small pair of scissors, a wooden pencil in a metal case, a penknife or eraser knife, and a nail file; others, a knife and wooden pencil in metal case; and the smallest, only a pair of scissors with a folding handle. (Exhibits 3, 4, 5, 6, 7, 8, 9, and 12.)

These items are invoiced as "pocket sets, leather," and "pocket sets, metal, in leather case," and are items 3025, 3026, 3027, 3028, 3001½N, 3013, 3003½, and 3002 on the invoices.

There is also an item (No. 34), invoiced as "desk sets, leather," of which there is no sample. The testimony, however, shows it is a desk set consisting of a long pair of shears and a letter opener in a sort of leather scabbard.

The largest sample (Exhibit 2) measures 3½ by 2⅞ inches by three-fourths of an inch thick, and the smallest (Exhibit 9) 2½ by 1½ inches by three-eighths of an inch thick. In all, metal is the component of chief value in the entirety, and all are valued over 20 cents per dozen pieces.

This merchandise was assessed with duty at 60 per cent ad valorem under that portion of paragraph 356 of the tariff act of 1913 which reads as follows:

> * * * And articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, card cases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, *combs*, match boxes, mesh bags and purses, millinery, military and hair ornaments, pins, powder cases, stamp cases, *vanity cases*, and like articles; all the foregoing and parts thereof, finished or partly finished, *composed of metal*, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, * * *. (Italics ours.)

So many claims are made in the protests that it is difficult to determine which the protestant relies on. There are, however, claims that the merchandise is dutiable at 20 per cent ad valorem under paragraph 167 as manufactures of metal, or under paragraph 360 at 30 or 35 per cent ad valorem; also in protest 764101 only, for 50 per cent ad valorem under paragraph 167.

There is also a claim for a discount of 5 per cent under section 4 of paragraph J, subsection 7, but inasmuch as this claim was ignored at the trial, it will be considered abandoned, and is overruled.

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Paragraphs 167 and 360 are as follows:

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

360. Bags, baskets, belts, satchels, card cases, pocketbooks, jewel boxes, portfolios, and other boxes and cases, made wholly of or in chief value of leather or parchment, not jewelry, and manufactures of leather or parchment, or of which leather or parchment is the component material of chief value, not specially provided for in this section; 30 per centum ad valorem; *any of the foregoing permanently fitted and furnished with traveling*, bottle, drinking, dining, luncheon, *and similar sets*, 35 per centum ad valorem. (Italics ours.)

At the hearing the protestants introduced the testimony of one witness, who admitted that Exhibits 1 and 2 were known as *vanity cases* in the trade, also as pocket toilet or pocket sets, and testified that the other exhibits were known as pocket sets, pocket toilets, and pocket companions. He also testified that these articles were carried by women in their handbags or in the pocket; in sewing baskets, or as a fitting for bags. He introduced in evidence a lady's handbag, showing how an article, similar to those embraced in class 3, was carried in a pocket of the bag as a fitting, and testified that his firm sold about 40 per cent of the merchandise for that purpose, and that the other 60 per cent were sold separately to the leather counter, and used by women as a convenience to put into their bags or on the chiffonier or bureau or for traveling purposes. From a reading of the entire testimony we gather these articles are adapted for use of the traveler or for ladies' handbags. The compactness of the samples confirms us in the belief that they are intended to be carried on or about the person. In this form they would not be convenient for use on a bureau or lady's workbasket, as it would be somewhat troublesome to open the receptacle and remove each article from its place. Common knowledge shows us that where the articles contained in these cases are so used they generally lie loose on the bureau or in a receptacle in the workbasket, so that they can be picked up handily when needed.

In Mark Cross Co.'s case (Abstract 29847) the board had before it, among other things, for classification leather cases for men containing nail file, lead pencil, and buttonhook, with accompanying metal holders or handles, in which the metal articles were the component material of chief value in the entirety. The board held them dutiable at 45 per cent ad valorem under paragraph 199 of the tariff act of 1909, rather than under paragraph 452 of the same act as cases, etc., permanently fitted with traveling and similar sets, at 50 per cent ad valorem, and was affirmed by the Court of Customs Appeals in United States *v.* Mark Cross Co. (4 Ct. Cust. Appls.,

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274; T. D. 33489). Those articles seem to be similar to the merchandise covered by class 3.

The board also held in that opinion manicure cases containing corn knives, cuticle scissors, nail scissors, and nail polishers, provided with vacant leather loops to hold additional articles, were not permanently fitted with traveling or other sets, and that being composed in chief value of leather they were dutiable at 40 per cent ad valorem under the first clause of paragraph 452; but the court reversed the board, holding that *any* combination of toilet articles comes within the definition of "traveling set," provided they are made up to be carried by the traveler and are designed for the toilet or for the care of his person or clothing while traveling; and that articles not so designed are not traveling sets. Accordingly the court held the last-mentioned articles dutiable at 50 per cent ad valorem under the last clause of paragraph 452. United States *v.* Mark Cross, *supra.*

The manicure cases above mentioned seem to be of a similar nature to Exhibits 1 and 2 in this case.

The court said in that case:

> The manicure cases * * * furnished as described, could, of course, be used in the home, but that fact can hardly be regarded as sufficient to remove them from the category of cases and bags fitted with traveling sets, especially as the articles themselves make it patent that they are not intended for the home but for the use of the traveler or owner when absence from the usual place of abode precludes daily access to the dressing table or lavatory.
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> * * * * * * *
>
> The flat leather cases for men, fitted to be carried in the vest pocket and containing a nail file, knife blade, lead pencil, buttonhook, and metal holders for the several implements are not specially designed or intended for the use of the traveler. In our opinion these particular leather cases rank with leather cases for holding eyeglasses or spectacles, and inasmuch as they are appointed for every-day use they do not fall within the designation of cases furnished with traveling sets. For the same reason they are not cases fitted with sets similar to traveling sets.

Paragraphs 199 and 452 of the tariff act of 1909, being the corresponding paragraphs to 167 and 360 of the present act, were as follows:

> 199. Articles or wares not specially provided for in this section, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.
>
> 452. Bags, baskets, belts, satchels, cardcases, pocketbooks, jewel boxes, portfolios, and other boxes and cases, made wholly of or in chief value of leather, not jewelry, and manufactures of leather, or of which leather is the component material of chief value, not specially provided for in this section, forty per centum ad valorem; *any of the foregoing permanently fitted and furnished with traveling*, bottle, drinking, dining or luncheon *and similar* sets, fifty per centum ad valorem. (Italics ours.)

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The following differences between the above-quoted paragraphs and paragraphs 167 and 360 of the present act will be noted:

Paragraph 167 provides a duty of 50 per cent ad valorem for articles composed wholly or in part of platinum, gold or silver, or plated with gold or silver, as against 45 per cent ad valorem in paragraph 199; whereas paragraph 167 provides for only 20 per cent ad valorem (instead of 45) for articles "composed *wholly or in chief value*" of other metals. The corresponding part of paragraph 199 read "*composed wholly or in part.*"

The wording of paragraph 452 of the act of 1909 and that of the corresponding paragraph in the present act (360) is practically identical, except that 360 provides also for parchment, and the rates are lower, being 30 and 35 per cent ad valorem, instead of 40 and 50 per cent ad valorem as under the old tariff.

The wording of the paragraphs quoted is so similar that (notwithstanding the fact that there was no provision in the tariff act of 1909 like the third clause in paragraph 356 of the act of 1913) we think the decision referred to will apply with equal force to the merchandise in question here and its proper classification under the present act as to similar merchandise under the old act.

It is true that paragraph 356 provides *eo nomine* for vanity cases, and that we have held that it covers not only articles wholly composed of metal but those in chief value of metal. Protests of Hensel *et al.*, G. A. 7625 (T. D. 34870), affirmed in Hensel *v.* United States (6 Ct. Cust. Appls., —; T. D. 35434). And it is also true that the witness states that Exhibits 1 and 2 are vanity cases; but, in view of the fact that the cases themselves, represented by those exhibits, are of leather, with the exception of a small metal clasp, we think they are not the kind of vanity cases covered by paragraph 356, for the reason that it enumerates "vanity cases, and like articles; * * * composed of metal, * * *."

We have also taken into consideration the fact that some of the articles inclosed in these exhibits, such as metal pencils, manicure files, perfume flasks, metal-covered memorandum pads, imported separately, have been held by us dutiable under paragraph 356. *In re* protest 768584 of Langfeld Bros. (Abstract 38760); *In re* protests 764466, etc., of Dingelstedt & Co. *et al.* (Abstract 38765); *In re* protest 774073 of J. J. Gavin & Co., G. A. 7787 (T. D. 35793); also Hensel case, *supra.* But in this case they are part of an entirety composed of leather cases and metal contents, and although the metal contents are chief value in the entirety, we think the leather cases take this merchandise out of paragraph 356. To hold otherwise, at least as far as Exhibits 1 and 2 are concerned, merely because the entirety may be designed to be carried on or about or attached to the person, is in chief value of metal, and valued over 20 cents per dozen,

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we think might tend to nullify paragraph 360, as far as the fitted and furnished leather traveling sets and similar sets enumerated therein are concerned, where the contents or fittings of such sets are of metal and constitute chief value in the entirety.

Therefore, in view of United States *v.* Mark Cross, *supra*, we hold Exhibits 1 and 2 dutiable at 35 per cent ad valorem under paragraph 360 (being items 3017 and 3018); the articles represented by Exhibits 4, 5, 9, and 12 (items 3026, 3028, 3003½, and 3002), the metal portion thereof being apparently gold plated, dutiable at 50 per cent ad valorem under paragraph 167; and those represented by Exhibits 3, 5, 7, and 8 (items 3025, 3027, 3001½N, and 3013), and item 34, invoiced as desk sets, dutiable at 20 per cent ad valorem under paragraph 167.

Protest 764101 is sustained to the extent indicated and the collector's decision reversed.

In protests 764233 and 764335 there is no claim for 50 per cent ad valorem under paragraph 167, therefore they are sustained as to Exhibits 1, 2, 3, 5, 7, and 8, and item 34 only, as indicated above, the collector's decision being reversed as to these items; but, while not acquiesced in, affirmed as to items 3026, 3028, 3003½, and 3002, so far as these items may be covered by the last-mentioned protests.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 2, JANUARY 7, 1916.

No. 39047.—Protest 765495 of Stone & Downer Co. (Boston).

WIRE-DRAWING MACHINES.—Merchandise described by the appraiser as wire-drawing machines and a wire-punch grinder, classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as machine tools at 15 per cent under paragraph 165.

Opinion by FISCHER, G. A. It was found that the dies of the wire-drawing machines, which are parts of the machines, are to all intents and purposes employed as tools which operate on metal, and the machines are driven by other than hand power. They were held dutiable under paragraph 165, as claimed. Protest overruled as to the wire-punch grinder.

No. 39048.—Protest 791235 of T. D. Downing Co. (Boston).

BOOKS—TEXTBOOKS.—The question here is whether a book entitled "Making of Modern England," classified at 15 per cent ad valorem under paragraph 329, tariff act of 1913, is a textbook within the meaning of paragraph 426 and entitled to free entry thereunder.

Opinion by FISCHER, G. A. The books were found not to be textbooks and held properly classified under paragraph 329. Dutton *v.* United States (6 Ct. Cust. Appls., —; T. D. 35987), affirming G. A. 7692 (T. D. 35170), followed.

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No. 39049.—Protests 655236, etc., of W. H. Stiner & Son (New York).

SILK HAIR NETS.—Silk hair nets returned by the appraiser as made on the Lever or Gothrough machine, classified at 70 per cent ad valorem under paragraph 350, tariff act of 1909, are claimed dutiable at 60 per cent under paragraph 402.

Opinion by HOWELL, G. A. On the authority of Abstract 36066 (T. D. 34629), affirmed in United States *v.* Mills (5 Ct. Cust. Appls., 534; T. D. 35178), the protests were sustained as to such hair nets as appear to have been made on a machine other than the Lever or Gothrough machine.

No. 39050.—Protest 752420-53930 of G. W. Sheldon & Co. (Chicago).

COTTON POLISHING CLOTHS.—Merchandise classified at 40 per cent ad valorem under paragraph 257, tariff act of 1913, is claimed to be cotton polishing cloths, dutiable under the specific provision therefor in paragraph 264 at 25 per cent.

Opinion by HOWELL, G. A. It was found that the articles in question are polishing cloths made from pile fabrics, and that they seem to be aptly described in both paragraphs. On the authority of G. A. 7656 (T. D. 35019), holding Turkish towels more specifically provided for as towels of cotton under paragraph 264 than as articles made of pile fabrics under paragraph 257, the articles here in question were held dutiable as polishing cloths at 25 per cent under paragraph 264, as claimed.

No. 39051.—Protests 748144, etc., of Rice-Stix Dry Goods Co. et al. (St. Louis).

FLAX CRASH.—Linen crash classified as a manufacture of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, is claimed dutiable as plain woven flax fabrics at 30 per cent under paragraph 283.

Opinion by COOPER, G. A. The crash in question was found to be of the same character as that held to be plain woven in United States *v.* Douglas (6 Ct. Cust. Appls., —; T. D. 35342). It was held properly classified under paragraph 284.

No. 39052.—Protests 747790, etc., of A. Sulka & Co. et al. (New York).

TUCKED WEARING APPAREL PARTLY MADE.—Shirt bosoms and blouses of cotton or flax, classified as articles made in whole or in part of tuckings, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as partly made cotton wearing apparel at 30 per cent under paragraph 256.

Opinion by COOPER, G. A. On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., —; T. D. 35388), the articles found not to be embroidered were held dutiable at 30 per cent under paragraph 256, as claimed. Protests overruled as to the embroidered wearing apparel.

No. 39053.—Protest 740572 of Alms & Doepke Co. (Cleveland).

DRAWNWORK.—Doilies and other flax articles from which threads have been drawn and additional threads inserted, forming an openwork figure or design, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as manufactures of flax at 35 per cent under paragraph 284.

Opinion by COOPER, G. A. From an inspection of the sample it was found that the merchandise conforms to the description of openwork or drawnwork in paragraph 358. Protest overruled; G. A. 7637 (T. D. 34918) cited.

No. 39054.—Protest 750940-54460 of John V. Farwell Co. (Chicago).

COTTON TABLE DAMASK.—Cotton table damask classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. On the authority of G. A. 7630 (T. D. 34903) the provision for cotton table damask in paragraph 263 was held more specific. Protest sustained.

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No. 39055.—Protest 761756 of M. Gardner & Co. (New York).

UNION TOWELS.—Damask towels composed of cotton and flax, classified as in chief value of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, are claimed dutiable as towels at 25 per cent under paragraph 264, as manufactures of cotton at 30 per cent under paragraph 266, or as Jacquard figured goods under paragraph 258.

Opinion by COOPER, G. A. There being no evidence to show the material of chief value in the towels in question, the protest was overruled.

No. 39056.—Protests 761769, etc., of J. C. Klein et al. (New York).

UNION FABRICS.—Union fabrics classified as flax chief value at 35 per cent ad valorem under paragraph 284, tariff act of 1913, are claimed to be chiefly of cotton, dutiable at 30 per cent under paragraph 266, or as cotton table damask at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. From the report of the analyst it was found that the merchandise is in chief value of flax. It was held dutiable as classified under paragraph 284.

No. 39057.—Protests 766606, etc., of F. B. Vandegrift & Co. (Philadelphia).

COTTON CLOTH, JACQUARD FIGURED.—Figured cotton fabrics classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable as woven figured under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls, —; T. D. 35501), one item was held dutiable under paragraph 252, as claimed.

No. 39058.—Protest 770107 of Kern Commercial Co. (New York).

JUTE FABRICS, NONINFLAMMABLE.—Merchandise returned as plain woven fabrics of single jute yarns rendered noninflammable, classified at 10 per cent ad valorem under paragraph 279, tariff act of 1913, is claimed entitled to free entry as jute yarn not rendered noninflammable under paragraph 408.

Opinion by COOPER, G. A. It was found that the merchandise is imported in bales and was shipped to a fireproofing plant in the United States immediately upon delivery, where it was rendered noninflammable, and was afterwards used in the ventilating system in coal mines. The analyst reports that the material is inflammable. It was held free of duty under paragraph 408.

No. 39059.—Protest 767709 of C. H. Wyman & Co. (St. Louis).

COTTON CLOTH, YARN NUMBER—BEADED TRIMMINGS.—Beaded trimmings classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, were admitted on amended report of the appraiser to be dutiable at 50 per cent under paragraph 333, as claimed. It is also claimed that certain cotton cloth was classified under the wrong provision of paragraph 252.

Opinion by COOPER, G. A. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., —; T. D. 35464) and the amended report of the appraiser, protest sustained as to beaded trimmings held dutiable at 50 per cent under paragraph 333. From the report of the analyst the cotton cloth was found to have been classified according to the correct yarn number.

No. 39060.—Protest 774281 of Barth & Guttman (New York).

COTTON CLOTH—YARN NUMBER.—Colored cotton cloth classified at 12½ per cent ad valorem under paragraph 252, tariff act of 1913, is claimed dutiable at a lower rate under the same paragraph.

Opinion by COOPER, G. A. From the analysis of the sample it was found that the cotton cloth was properly classified under paragraph 252.

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No. 39061.—Protest 775358-55588 of Marshall Field & Co. (Chicago).

COTTON YARN.—Cotton yarn classified as combed, at 22½ per cent ad valorem under paragraph 250, tariff act of 1913, is claimed not combed, dutiable at 20 per cent under the same paragraph.

Opinion by COOPER, G. A. It was found that the yarn had not been combed and it was held dutiable at 20 per cent under paragraph 250, as claimed.

No. 39062.—Protest 776563 of M. J. Corbett & Co. (New York).

DRESS STAYS, COTTON CHIEF VALUE.—Dress stays composed of cotton, bone, and metal, classified as manufactures of cotton at 30 per cent under paragraph 206, tariff act of 1913, are claimed dutiable at lower rates under paragraph 366, 367, 368, or 369.

Opinion by COOPER, G. A. From the analysis, upon which the protest was submitted, it was found that the merchandise is in chief value of cotton, as reported by the appraiser. Protest overruled.

No. 39063.—Protest 781459 of W. B. Quaintance (New York).

COTTON CLOTH—VELVETS.—Merchandise classified as velvets at 40 per cent ad valorem under paragraph 257, tariff act of 1913, is claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. From the statement of the appraiser that the merchandise should have been returned as cotton cloth, woven figured, it was held dutiable at the appropriate rate under paragraph 252, as claimed.

No. 39064.—Protest 781736 of F. A. Hogan & Co. (Portland, Me.).

JUTE BAGS.—Jute bags made from colored twilled fabrics, second hand, classified as manufactures of vegetable fiber at 35 per cent ad valorem under paragraph 284, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 281.

Opinion by COOPER, G. A. It was found that the bags in question are made from a twilled fabric and that there is a colored stripe covering a substantial portion of the bag. They were held properly classified under paragraph 284. Abstract 37088 (T. D. 35020) and G. A. 4997 (T. D. 23286) followed.

BEFORE BOARD 3, JANUARY 7, 1916.

No. 39065.—Protests 783103, etc., of Wo Kee & Co. et al. (San Francisco), and protests 786297, etc., of Quong Tuck Co. et al. (Seattle).

DUCK MEAT.—These protests are against the classification of duck meat as prepared poultry under paragraph 229, tariff act of 1913.

Opinions by WAITE, G. A. On the authority of United States *v.* Brown (6 Ct. Cust. Appls., —; T. D. 35471) duck meat was held properly classified under paragraph 229.

No. 39066.—Protest 785311 of Geo. S. Bush & Co. (Seattle).

WEIGHT OF WALNUTS.—It is claimed here that duty was assessed upon excessive weight of an importation of shelled walnuts.

Opinion by WAITE, G. A. Protest unsupported; overruled.

BEFORE BOARD 1, JANUARY 11, 1916.

No. 39067.—Protests 787764, etc., of F. Bredt & Co. (New York).

BURSOLINE—GREASE.—Merchandise invoiced as bursoline and grease, classified as a nonenumerated manufactured article at 15 per cent ad valorem under paragraph 385, tariff act of 1913, and as grease not specially provided for, under

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paragraph 44, is claimed entitled to free entry under paragraph 498, or dutiable at 10 per cent under paragraph 385.

Opinion by McClelland, G. A. It appears from the chemist's report that the merchandise consists of a sulphonated saponification of oil and petroleum. It was held dutiable at 15 per cent under paragraph 385. Protests overruled. United States *v.* Schrock (5 Ct. Cust. Appls., 444; T. D. 34974) followed.

No. 39068.—Protest 793678 of E. J. Rudgard Wigg (Norfolk).

Gloves, Schmaschen.—Women's gloves classified as lambskin at $2 per dozen pairs under paragraph 363, tariff act of 1913, are claimed to be Schmaschen, dutiable at $1 per dozen pairs under paragraph 362.

Opinion by McClelland, G. A. It was found that the importation consisted of both lambskin and Schmaschen gloves. Those found to be Schmaschen were held dutiable at $1 per dozen pairs, as claimed.

No. 39069.—Protest 780616 of M. L. Eckstein & Co. (New York).

Catgut, Manufactured.—Merchandise invoiced as catgut, reported by the appraiser to consist of various strands of gut twisted in the form of a cord and coated with a light varnish substance or material, classified as a manufacture of catgut at 20 per cent ad valorem under paragraph 366, tariff act of 1913, is claimed free of duty as catgut, unmanufactured, under paragraph 443.

Opinion by McClelland, G. A. It was found that this catgut is imported in rolls of 50-meter lengths, and, with the exception of cutting, is ready for use on shuttle machines, that being its only use. It was held dutiable as manufactures of catgut under paragraph 366, as classified. United States *v.* Sheldon (5 Ct. Cust. Appls., 421; T. D. 34944) followed.

No. 39070.—Protest 778054–56520 of Marshall Field & Co. (Chicago).

Ornamental Leaves.—Merchandise classified as dyed leaves, ornamental, at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable at 15 per cent under paragraphs 385 and 386.

Opinion by McClelland, G. A. The commodity was found to be adiantum leaves, colored green, used for decorative or ornamental purposes. They were held properly classified under paragraph 347.

No. 39071.—Protest 776595 of Rafael del Castillo & Bro. (New York).

Extract of Bark.—The commodity classified as an extract of vegetable origin at three-eighths of 1 cent per pound under paragraph 30, tariff act of 1913, is claimed free of duty as an extract of bark commonly used for tanning, under paragraph 624.

Opinion by McClelland, G. A. On the authority of Abstract 38085, the merchandise was held entitled to free entry under paragraph 624, as claimed.

No. 39072.—Protests 754161, etc., of Dingelstedt & Co. et al. (New York).

Bone Black—Powdered Charcoal.—Merchandise classified as bone black at 15 per cent ad valorem under paragraph 53, tariff act of 1913, is claimed free of duty as powdered charcoal under paragraph 447.

Opinion by McClelland, G. A. Upon stipulation of counsel that the merchandise is similar in all material respects to the commodity held free of duty under paragraph 447, tariff act of 1913, the protests were sustained. Abstracts 37347, 37719, 38076, and 38113 followed.

No. 39073.—Protest 772572 of Pierson-Schade Forwarding Co. (St. Louis).

Candles—Toys.—Paraffin Christmas candles classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of wax at 10 per cent under paragraph 367, or as nonenumerated manufactured articles at 15 per cent under paragraph 385.

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Opinion by SULLIVAN, G. A. The candles are white and colored, 3½ inches long by three-eighths of an inch in diameter in their thickest part. They were found not to be toys and held dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385. Abstract 39025 followed. G. A. 7821 (T. D. 35916) and Abstract 38897 cited.

No. 39074.—Protest 764415 of Dingelstedt & Co. (New York).

ROTAMETERS AND COMPTEURS.—The appraiser describes the merchandise in question as curb measures and compteurs composed in chief value of metal, carried in the pocket, and valued at over 20 cents per dozen pieces. They were classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Each article resembles in form, size, and general appearance a nickel-plated watch. The rotameters are map measures used for determining the length of lines either in a drawing or a map, and the compteurs are used to indicate the number of persons passing through a gate or door. They are carried on the person for purposes of transportation, but are of no use when being so carried. They were held not to come within the purview of paragraph 356, but dutiable as manufactures of metal under paragraph 167. G. A. 7824 (T. D. 35949), Abstract 38876, and Gallagher *v.* United States (6 Ct. Cust. Appls., —; T. D. 35343) followed.

No. 39075.—Protests 719525, etc., of H. Bendel (New York).

CELLULOID PINS—JEWELRY.—Celluloid pins classified at 85 per cent ad valorem under paragraph 448, tariff act of 1909, are claimed dutiable at 60 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Altman (6 Ct. Cust. Appls., —; T. D. 35390) the pins in question were held dutiable at 60 per cent under paragraph 448, as claimed.

No. 39076.—Protests 450576, etc., of J. Mamluck & Co. et al. (New York).

JEWELRY.—These protests, submitted on stipulation of counsel, are against the classification of duty upon certain jewelry.

Opinion by SULLIVAN, G. A. Merchandise described as jewelry or parts of jewelry, rope, curb, cable, and other fancy patterns of chain composed of rolled gold plate, or of silver, German silver, white metal, or brass, not exceeding one-half of 1 inch in diameter, breadth, or thickness, valued at 30 cents per yard or more, in long lengths; hatpins, chains of silver, German silver, white metal, brass, or gun metal, or set with imitation precious stones; long chains, neck chains, bar pins, scarfpins, lockets, charms, brooches, earrings, pins, veil pins, colliers, crosses, bracelets, pendants, lavallieres, necklaces, necklets, fobs, fob chains, clasps, compasses, snaps, hair ornaments or combs of silver, white metal, brass, gun metal, or set with imitation precious stones; barrettes, hairpins, bandeaus, slides, hair bands, diadems, and buckles was held dutiable at 60 per cent under paragraph 448 as claimed. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536), United States *v.* Massce (6 Ct. Cust. Appls., —; T. D. 35972), United States *v.* American Express Co. (6 Ct. Cust. Appls., —; T. D. 35341), and United States *v.* Altman (6 Ct. Cust. Appls., —; T. D. 35390) followed. Bags or purses or bag frames composed of gun metal or brass, vanity cases, coin purses, note books, match boxes, toilet accessories, and puff boxes were held dutiable at 45 per cent under paragraph 199. G. A. 7011 (T. D. 30545) followed. Articles in imitation of jet were held dutiable at 45 per cent under paragraph 109, on the authority of United States *v.* Sheldon (2 Ct. Cust. Appls., 283; T. D. 32084). Protests sustained in part.

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No. 39077.—Protest 764008 of Schutte, Bunemann & Co. (New York).

CHICLE, CRUDE.

BROWN, *General Appraiser:* The merchandise here is chicle, which was classified at 20 cents per pound under the provision in paragraph 36, act of 1913, for "chicle, refined or advanced in value by drying, straining, or any other process or treatment whatever beyond that essential to the proper packing." It is claimed to be dutiable at 15 cents per pound as "crude chicle" under the same paragraph.

The testimony shows that chicle is usually imported in bags containing 100 to 200 pounds, sometimes 250 pounds, each, and generally in cakes, hand pressed. The cakes weigh from 12 to 20 pounds each. It sometimes comes in large lumps, one lump weighing 100 to 150 pounds. In its condition as imported, it usually contains extraneous matter, such as leaves, twigs, dirt, etc., and it is bought and sold by the pound in the condition as imported. That chicle comes from the milk or sap of the sapodilla tree. The sap or milk, after it is boiled down, or coagulated, becomes the commercial article—chicle.

The witness for the importer testified that the article in question was crude chicle; that he was familiar with crude and dried chicle as known in the trade; that this was not dried by any process, but had only become somewhat dry by exposure to the air. That to dry chicle properly it is broken up, put in a drying room and there the water is evaporated from it. It comes out of the drying room in crumbs or small grains. After being dried, foreign substances are carefully eliminated; that the trade understanding is that crude chicle contains from 20 to 40 or 50 per cent of moisture. This statement as to moisture was based on general information, not on personal experience. He had never made any tests to determine the percentage of moisture.

The report of the Government chemist, admitted in evidence, shows 8.05 per cent of moisture in the sample of the importation analyzed by him. Upon this report the examiner testified he based his advisory return. Other reports were admitted of analyses of samples of other importations, which show a range of from 21.10 to 28.55 per cent of moisture.

We think the testimony of the witness for the importer, based upon his experience and knowledge in handling chicle for 30 years, establishes a prima facie case in favor of the importer's claim that this is crude chicle. And this is not overcome by the evidence introduced by the Government showing that the sample contained only 8.05 per cent of moisture. As chicle dries when exposed to the air, it is possible that the portion from which the sample was taken by the Government examiner had been exposed to the air for some time, perhaps longer than some other portions of the shipment, which, perhaps, accounts for its dryness and dark color, for the witness for the importers said that it seemed to him that the official sample did not properly represent the goods in question, especially on account of the dark color, the color generally being lighter. Anyway, there is no legally sufficient evidence in the record upon which to base a finding that the chicle has been advanced in value by any process of drying, straining, or refining, or other treatment.

We therefore find that the chicle in question is crude, and hold it dutiable at 15 per cent under paragraph 36.

The protest is sustained.

No. 39078.—Protest 768796 of American Chicle Co. (St. Louis).

CHICLE, CRUDE.—Chicle classified as refined at 20 cents per pound under paragraph 36, tariff act of 1913, is claimed to be crude chicle, dutiable at 15 cents per pound under the same paragraph.

Opinion by BROWN, G. A. The commodity in question was found to be crude and held dutiable at 15 cents per pound under paragraph 36, as claimed.

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No. 39079.—Protest 744892 of Duplan Silk Co. (New York).

DRESS GOODS.—Merchandise reported by the appraiser to be dress goods composed of wool and silk, silk chief value, classified at 44 cents per pound and 55 per cent ad valorem under paragraph 381, tariff act of 1909, is claimed dutiable as woven fabrics in chief value of silk at 45 per cent under paragraph 318, tariff act of 1913.

Opinion by BROWN, G. A. The dress goods in question was held dutiable under paragraph 318, tariff act of 1913, as claimed. G. A. 7837 (T. D. 36046) and Hartranft *v.* Meyer (135 U. S., 237) followed.

No. 39080.—Protests 708403, etc., of L. S. Immermann (New York).

FISH IN TINS.—Merchandise classified as fish in tins at 30 per cent ad valorem under paragraph 270, tariff act of 1909, is claimed dutiable as herrings, pickled or salted, at one-half cent per pound under paragraph 272.

Opinion by BROWN, G. A. The fish were found to be anchovies, salted or pickled, and not in oil, and were held dutiable under paragraph 272, as claimed. United States *v.* Miller (5 Ct. Cust. Appls., 256; T. D. 34443) followed.

No. 39081.—Protests 770818-55480, etc., of P. V. Bright Co., and protest 772289-55848 of G. W. Sheldon & Co. (Chicago), and protest 748476 of Meyer & Lange (New York).

FISH, BONED.—Merchandise invoiced as fish balls, fish pudding, appetitsild, and fish carbonade, classified as fish in tins at 15 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable as fish, skinned or boned, under the same paragraph.

Opinions by BROWN, G. A. On the authority of G. A. 7720 (T. D. 35365), affirmed in Tokstad *v.* United States (6 Ct. Cust. Appls., —; T. D. 35981) the merchandise was held dutiable at 15 per cent under paragraph 216, as classified.

No. 39082.—Protest 784626 of Acker, Merrall & Condit Co. (New York).

GODDARD'S PLATE POWDER—POLISH.—Goddard's plate powder classified as a polishing powder at 15 per cent ad valorem under paragraph 11, tariff act of 1913, is claimed dutiable as whiting under paragraph 60, or as clay or earth under paragraph 76.

Opinion by BROWN, G. A. Protest unsupported; overruled.

BEFORE BOARD 3, JANUARY 11, 1916.

No. 39083.—Protest 785971 of Thomas Holmes (Boston).

SILK NOILS—LENGTH—SMALL SAMPLES.

HAY, *General Appraiser:* The merchandise which is the subject of this protest is invoiced as Tussah silk noils. It was assessed for duty under paragraph 311, tariff act of 1913, at 20 cents per pound as silk noils exceeding 2 inches in length, and it is claimed to be free of duty under paragraph 599 as silk cocoons and silk waste. It seems to be conceded that the merchandise in question would be properly classifiable under paragraph 590 if it is under 2 inches in length, but if over 2 inches in length it unquestionably comes under that provision of paragraph 311 which reads as follows: "* * * Silk, and silk noils exceeding 2 inches in length."

All tariff provisions are addressed to the common understanding of men engaged in importing and merchandising, and particularly those engaged in that special line of business to which any particular tariff provision relates. Silk noils never come in skeins or threads or in such a way that their exact length

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can be told with mathematical precision; they come in bales, in which the fibers are always of different length. In the case at bar we think it is clearly shown that the commercial usage is to treat a bale of noils that does not contain an appreciable proportion of noils over 2 inches in length as if it did not contain any that were over 2 inches in length; but, aside from commercial usage, this occurs to us to be a rational interpretation of the provision. Unless every bale of silk noils that has in it any fibers that are more than 2 inches in length is to be classified under paragraph 311, it is difficult to draw the line anywhere except that the quantity must be so substantial as to characterize the entire bale.

The merchandise in question was examined by the examiner of that character of merchandise in the appraiser's office at the port of Boston, and by him passed as free of duty as not exceeding 2 inches in length. Under a regulation of the department samples were sent to the appraiser's office at the port of New York, and while there is some little doubt from the testimony as to the identity of these samples we think it fairly shown that they finally reached two employees of that office whose business it is to analyze or examine merchandise of this general character. They examined the samples and found a very appreciable percentage of noils exceeding 2 inches in length. Their examination, however, was confined to a very small quantity of the merchandise. Out of these small samples one of the examiners drew ninety fibers and the other a hundred. Based upon this examination, we are asked to classify the 14,000 pounds of noils which constituted the shipment as noils of more than 2 inches in length; but opposed to the testimony of those two witnesses is the testimony of 10 witnesses who have been for many years engaged in the business where merchandise of like character is constantly before them and upon whose judgment commercial transactions are being daily conducted. These men had before them liberal samples from each bale and gave testimony with reference to the percentage of noils over 2 inches in length contained in the several bales. This testimony to some extent varied, as did the various bales, but in no instance does it show more than 25 per cent of noils over 2 inches in length, and the average is far less than that. Some of the witnesses put some of the bales as low as 10 per cent. This, in addition to the opinion of the examiner of such merchandise at Boston, we think should preponderate, and under it for commercial and tariff purposes the noils in question do not exceed 2 inches in length.

The protest is sustained and the collector is directed to reliquidate the entry accordingly.

BEFORE BOARD 1, JANUARY 13, 1916.

No. 39084.—Protest 750656 of F. Euler & Co. (New York).

SMALL FISH NETS—TOYS.—Small fish nets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 271, at 30 per cent under paragraph 266, at 20 per cent under paragraph 167 or 176, or at 15 per cent under paragraph 114.

Opinion by SULLIVAN, G. A. It was found that the article is like the ordinary dip or hand net used by fishermen in taking a fish out of water after it has been hooked. It is very small, the diameter of the wire ring holding the net being only about 3½ inches and the handle, either of wood or twisted wire, from 9 to 10 inches long. It is used for removing gold fish from tanks. It was found not to be a toy. United States *v.* Illfelder (1 Ct. Cust. Appls., 109; T. D. 31115) followed. There being no proof as to the component material of chief value the protest was overruled.

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No. 39085.—Protest 734802 of B. Shackman & Co. (New York).

PENCILS—TOYS—ARTICLES CARRIED ON THE PERSON.—It is claimed in this case that merchandise invoiced as toy trinkets and classified at 35 per cent ad valorem under paragraph 342, tariff act of 1913, is dutiable at 20 per cent under paragraph 167.

At the hearing samples of an item invoiced as toy baskets were introduced. It was held that the protest, which was limited to toy trinkets, could not be enlarged at the hearing to include toy baskets. G. A. 7831 (T. D. 36003) followed.

SULLIVAN, *General Appraiser:* * * * The samples of the toy trinkets consist of fancy lead pencils in chief value of metal. Item 1921 is a metal container for an ordinary lead pencil, arranged so that the pencil can be drawn in or pushed out, having at one end a metal ring, and a device consisting of a series of metal bands arranged to slide over a bone marker, so that the words "no trumps," or the ace of diamonds, hearts, clubs, or spades can be displayed or covered by sliding the bands. This sample, when the pencil is pulled out, is of the full size of an ordinary lead pencil. Item 1934 is in the shape of an ordinary steel wood screw, arranged so that the lead can be propelled in or out of the screw. It is 3½ inches long. The other pencils are very small, the longest being less than 2½ inches in length, or 3 inches with the pencil extended, and the smallest with the pencil extended being only 1¾ inches long. Item 1936 is a metal container, holding, besides a pencil, a knife blade arranged to slide in or out of the container. Item 1938 represents a pistol with a pencil sliding in or out of the barrel. Item 1940 is in the form of a globe with a map of the world thereon; item 1937, of a pipe; item 1930, of a key; item 1929 represents a whistle; and item 1941 a small bottle. Each of these small samples has a ring attached thereto and contains a pencil, sliding in or out of the holder.

The evidence is that these pencils are used for card parties or dance programs, and that the ring is used to attach them to the program. The witness also said that he had never seen them carried in the pocket as a pencil, excepting the one that he describes as "the one that will mark for card party" (evidently 1921), and as to which he stated "that would be used as a card party mark. The others for programs."

On cross-examination by counsel for the Government, the following was disclosed:

Q. How long have you imported such merchandise?—A. Fifteen years.

Q. Do you know how they have been classified for duty during that time * * *?—A. I certainly do; they have been classified as metal every time that they have been brought in against our protest as toys; against our protest they have been brought in as metal.

We do not think that these pencils are toys within the the rule in the Illfelder case (1 Ct. Cust. Appls., 109–111; T. D. 31115), nor do we think they are of the same class as the pencils held by us to be designed to be worn on apparel or carried on or about or attached to the person like the articles enumerated in paragraph 356. In the matter of protests 741276, etc., of Hensel et al., G. A. 7625 (T. D. 34870); affirmed in Gallagher *v.* United States (6 Ct. Cust. Appls., —; T. D. 35343); and Hensel *v.* Same (6 Ct. Cust. Appls., —; T. D. 35434).

The board in its recent decision in the matter of protest 782729 of Byron L. Strasburger & Co., G. A. 7827 (T. D. 35971), said:

It would therefore seem that these timers are lacking in the one essential feature of resemblance held by the court (Gallagher case, *supra*) as absolutely necessary to be established before an article may be considered a "like article" to those enumerated in paragraph 356, for it will be noted that the court, in

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holding that the application of the rule of *ejusdem generis* to the interpretation of the phrase "like articles" is expressly limited by the language of the paragraph to articles worn or carried on the person "*when in their customary use*"; thereby clearly indicated that it considered similarity to such enumerated articles "in customary use" to be essentially the test of classification under said paragraph.

* * * * * * *

And even in pursuit of recreation and pleasure metal articles are frequently worn on or carried about the person, for instance, riding spurs, steel skates, hunting knives, pistols, rifles, pocket compasses, pedometers, etc. All of these articles are specially constructed and designed to be either worn on or carried about or attached to the person, and in the particular uses and purposes for which they are respectively employed often prove of great convenience and even necessity. But they could scarcely be classified as articles of personal comfort, convenience, or adornment, in the sense indicated by the court.

The same may be said of these pencils. They are used on special occasions, such as card parties, balls, or dances, and, with the exception of items 1921 and 1934, none appears to be capable of practical use. They are too large to be carried as watch charms, and the ring is evidently to adapt them for attachment to dance cards or programs. Their appearance indicates that they are to be used as favors or souvenirs on festive occasions, and were not designed to be worn on apparel or carried on or about or attached to the person; nor are they like articles to any of those enumerated in the paragraph.

We therefore hold them properly dutiable at 20 per cent ad valorem under paragraph 167. * * *

No. 39086.—Protests 758960, etc., of Carl Silverman (New York).

COMPASSES—MIRROR PUZZLES—TOYS.—Small compasses are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167, tariff act of 1913, and mirror puzzles at 30 per cent under paragraph 95. They were classified as toys at 35 per cent under paragraph 342.

Opinion by SULLIVAN, G. A. The compasses are cheap articles of lacquered iron or steel about 2¼ inches long, one leg being pointed and the other having a receptacle for a piece of lead or graphite. They were found to be capable of practical use for the purpose for which they are designed, namely, the drawing of circles, and are commonly used by school children. Although they are very cheap, retailing for 1 cent each, still an article may be cheap and yet not a plaything. United States *v.* Kraemer (5 Ct. Cust. Appls., 294; T. D. 34474) cited. They were held dutiable at 20 per cent under paragraph 167, as claimed. Protests overruled as to the mirror puzzles, which were classified as toys. Abstract 37755 followed. United States *v.* Sears (6 Ct. Cust. Appls., —; T. D. 35919) cited.

No. 39087.—Protests 751605, etc., of A. H. Ringk & Co. (New York).

FLASHLIGHT CASES.—Electric flashlight cases classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. It was stipulated that the flashlight cases in question are the same as those passed upon in G. A. 7794 (T. D. 35822). On the authority of that decision they were held dutiable at 20 per cent under paragraph 167.

No. 39088.—Protest 786699 of Schoverling, Daly & Gales (New York).

POCKET COMPASSES.—Small compasses of the size and general appearance of a watch, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 20 per cent as manufactures of metal under paragraph 167.

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Opinion by SULLIVAN, G. A. The compasses in question are sold to sportsmen for use in the woods. They were held dutiable at 20 per cent under paragraph 167, as claimed. G. A. 7824 (T. D. 35949) followed.

No. 39089.—Protest 782648 of Tiffany & Co. (New York).

MEDALS—MANUFACTURES OF METAL.—Religious medals plated with gold and silver, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel that the merchandise is of the same character as that which was the subject of Abstract 37664, the medals in question were held dutiable at 50 per cent under paragraph 167, as claimed.

No. 39090.—Protest 764776 of A. Strauss & Co. (New York).

TRIPLICATE MIRRORS—TOYS.—Small round mirrors and triplicate mirrors classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as mirrors at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. On the authority of Abstract 36892 (T. D. 34920) the circular mirrors and triplicate mirrors were held dutiable at 30 per cent under paragraph 95, as claimed.

No. 39091.—Protests 724543, etc., of Emrich & Schorsch et al. (New York).

JEWELRY.—Merchandise classified at 85 per cent or 75 per cent ad valorem under paragraph 448, tariff act of 1909, is claimed dutiable at 60 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. In accordance with the stipulation of counsel, the merchandise in question was found to be jewelry, or parts of jewelry, dutiable at 60 per cent under paragraph 448.

No. 39092.—Protest 779995 of Butler Bros. (New York).

HALLOWEEN LANTERNS—TOYS.—So-called Halloween or pumpkin lanterns, composed of paper, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as paper cut into designs or shapes, or as manufactures of paper, at 25 per cent under paragraph 332.

Opinion by SULLIVAN, G. A. The lanterns in question were held not to be toys. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) and Abstract 38875 followed. They were held dutiable at 25 per cent under paragraph 332, as claimed.

BEFORE BOARD 2, JANUARY 13, 1916.

No. 39093.—Protest 779688 of B. Shackman & Co. (New York).

GAMES—TOYS.—Merchandise reported by the appraiser to consist of boxes containing an assortment of games, including dominoes and checkers, classified at 50 per cent ad valorem under paragraph 341, tariff act of 1913, and place-card holders composed of celluloid classified as manufactures of celluloid at 40 per cent under paragraph 25, are claimed dutiable as toys at 35 per cent under paragraph 342.

Opinion by FISCHER, G. A. It was found that each box contains 12 different games, each game being a toy, with the exception of the dominoes and checkers, and that these 12 games are packed in a single box by direction of the importer, but intended for ultimate sale to the consumers as single games. They were held not dutiable as entireties.

The claim under paragraph 342 was sustained as to all the games, excepting the dominoes and checkers.

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BEFORE BOARD 3, JANUARY 13, 1916.

No. 39094.—Protest 785689-53092 of Sears, Roebuck & Co. (Chicago).

CLERICAL ERROR.

HAY, *General Appraiser:* This is a case of clerical error. The facts are that the merchandise in question was entered at the port of Chicago on the 2d of February, 1914, the importer making certain deductions to make market value. Certain of these deductions were added back by the appraiser and the merchandise hence appraised at a value in excess of that at which it was entered. On the 26th day of March, 1914, two certain affidavits were filed with the collector, the purport of which is that an error was made by the typewriter in copying the memorandum which was given to the clerk upon which to make the entry; that had this error not been made by the typewriter the clerk would have made the entry at a value which would not have been advanced by the appraiser. These affidavits do not become a part of the necessary papers in the passing of the transaction through the customhouse, but were filed with the collector to acquaint him with the fact that an error had been made. Notwithstanding these affidavits the collector, on the 16th day of April, 1914, liquidated the entry following the value found by the appraiser, and assessed duty accordingly, paying no attention to the affidavits in question except to forward them to the department for advice.

Under the law as it existed prior to the decision of the Court of Customs Appeals in United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) and in United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485), this would have been treated by this board and by the United States Circuit Court for the Second Circuit as a clerical error. In United States *v.* Wyman, *supra*, the Court of Customs Appeals used the following language:

> The clerk who prepared the entry may have misunderstood the law relating to such items, he may have misunderstood the facts, or he may have entered the item inadvertently. Nevertheless, clerically the item was not incorrect, for it stood in the invoice in form and substance as the clerk intended to enter it, and the entry correctly carried the intended signification to the mind of the collector. In such case it can not be said that the item was a clerical error, much less can it be said that it was a manifest clerical error. For whatever inaccuracy existed in the entry was the result of inaccurate intention on the accountant's part and not of the clerical execution of that intention.

We think that case must be controlling in the case at bar, and, following it as we understand it, the protest is overruled.

REHEARINGS GRANTED.

JANUARY 10, 1916.

No. 39095.—ROSARIES.—Protests 766946, etc., of R. F. Downing & Co. et al. Abstract 38767.

No. 39096.—GELATIN.—Protests 759551, etc., of Franz Euler & Co. Abstract 38805.

No. 39097.—GLASS ARTICLES.—Protests 561189, etc., of Fensterer & Ruhe. Decided November 24, 1915. Not published.

No. 39098.—PAPER.—Protest 580794 of Kronfeld, Saunders & Co. Decided December 8, 1915. Not published.

No. 39099.—POST CARDS.—Protest 765849 of Ideal Paper Box Co. Abstract 38947.

No. 39100.—ROSARIES.—Protests 786661, etc., of F. Pustet & Co. et al. Abstracts 38943 and 38906.

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No. 89101.—ROSARIES.—Protest 782731 of American Bead Co. Abstract 38984.

No. 89102.—ROSARIES.—Protest 783309 of Benziger Bros. Abstract 38984.

JANUARY 14, 1916.

No. 89103.—PIASSAVA.—Protests 765804, etc., of Husselrath Importing Co. Decided December 8, 1915. Not published.

(T. D. 36080.)

Emergency-revenue law—Bonds taxable.

Customs bonds issued by agents on behalf of corporate surety company under contract whereby the surety company agrees to be surety on all bonds in a designated amount for a certain premium executed by the agents for various principals are property taxable under the emergency revenue law of October 22, 1914.

TREASURY DEPARTMENT, *January 18, 1916.*

SIR: The department refers to your letter of the 9th ultimo, requesting to be informed whether certain customs bonds are subject to internal-revenue tax under the act of October 22, 1914.

You transmit an application in the name of a firm of customs brokers at your port to a corporate surety company to become surety on bonds to be filed by the brokers at Tampa.

It appears that in consideration of $50 premium paid by the brokers, the surety company agrees to become surety on customs bonds to the extent of $200,000 written within one year from November 20, 1915, and that the brokers intend to charge the principals of such bonds a fee for executing the same.

The Commissioner of Internal Revenue invites attention to T. D. 2106 (internal revenue), wherein it is stated that "where a contract for fidelity and other insurance is entered into at a specified sum, irrespective of the number of bonds to be written under it, stamps covering the amount of the premium charged may be affixed to the contract, and each bond issued will have written or stamped the following: 'Issued under contract dated ———, which contract has been duly stamped,' or words to that effect," and advises that this decision does not apply to the present case for the reason that the brokers are held to be the agents of the surety company, irrespective of the fact that they contract for customs bonds in a certain amount with such company and pay a premium therefor. The commissioner further advises that the brokers do not bind themselves as surety on the bonds which they in turn issue in various amounts, but the surety company agrees to become such surety, and that as the brokers are simply the "middlemen" in the transaction, the internal-revenue

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tax on the premium for the bonds which the brokers issue must be paid according to the true intent of the act of October 22, 1914.

You will be governed accordingly.

Respectfully, WM. P. MALBURN,
(103103.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Tampa, Fla.*

(T. D. 36081.)

Drawback on lubricating oil.

Drawback on lubricating oil manufactured by the Hudson Oil Co. (Inc.), of New York, N. Y., with the use of imported whale oil.

TREASURY DEPARTMENT, *January 20, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on lubricating oil manufactured by the Hudson Oil Co. (Inc.), of New York, N. Y., with the use of imported whale oil.

A manufacturing record shall be kept, which will show, in the case of each lot of lubricating oil manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity of lubricating oil produced, and the quantity and identity of imported whale oil appearing therein. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

The allowance shall not exceed the quantity of imported whale oil appearing in the exported lubricating oil, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated December 15, 1915, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on lubricating oil exported on or after December 2, 1915.

Respectfully, ANDREW J. PETERS,
(98979–1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36082.)

Common carrier.

Discontinuance of the bonded route of the A. H. Bull Steamship Co. for the transportation of dutiable merchandise.

TREASURY DEPARTMENT, *January 21, 1916.*

SIR: The department has received your letter of the 19th instant, with which was inclosed an application of the A. H. Bull Steamship

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Co. for the discontinuance of the route of said company covered by bond approved January 24, 1911, as a common carrier for the transportation of dutiable merchandise.

The discontinuance is authorized upon the condition that all requirements of the regulations have been complied with on the part of the principal on the bond. You should note the fact and date of discontinuance upon the copy of the bond of said company on file in your office, and retain the same without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(84637.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36083.)

Drawback on gas mantles.

Drawback on gas mantles manufactured by the Welsbach Co. with the use of thorium nitrate manufactured by the Welsbach Light Co. with the use of imported monazite sand and oxalic acid, in accordance with the provisions of T. D. 35447 of May 25, 1915.—T. D. 32886 of October 24, 1912, revoked.

TREASURY DEPARTMENT, *January 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on gas mantles manufactured by the Welsbach Co., of Gloucester, N. J., with the use of thorium nitrate manufactured by the Welsbach Light Co., of the same place, with the use of imported monazite sand and oxalic acid, in accordance with the provisions of T. D. 35447 of May 25, 1915.

The quantity of thorium nitrate which may be taken as the basis for the allowance of drawback on gas mantles manufactured by the Welsbach Co. shall not exceed the quantity appearing in the exported mantles as shown by the sworn statement and schedule of the manufacturers, dated November 24, 1915, which is transmitted herewith for filing in your office.

Supplemental sworn statements covering other kinds and brands of gas mantles may be filed, and upon verification of such schedules drawback may be allowed on the gas mantles covered thereby.

T. D. 32886 of October 24, 1912, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(60522-1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

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(T. D. 36084.)

Drawback on railway cars and parts.

T. D. 35862 of November 5, 1915, extended to cover railway cars and parts manufactured by the American Car & Foundry Co., of New York, N. Y.—T. D. 24350, T. D. 24403, T. D. 27592, T. D. 30242, T. D. 30306, T. D. 33830, and T. D. 34079 revoked.

TREASURY DEPARTMENT, *January 22, 1916.*

SIR: The department's regulations of November 5, 1915 (T. D. 35862), providing for the payment of drawback on locomotives and parts of locomotives manufactured by the Baldwin Locomotive Works, of Philadelphia, Pa., are hereby extended to cover railway cars (including freight cars, passenger cars, and coaches) and parts of same manufactured by the American Car & Foundry Co., of New York, N. Y., at any of its several factories and shops.

The sworn statement of the manufacturers, dated December 10, 1915, is transmitted herewith for filing in your office. The articles enumerated under classes A and B in the sworn statement of the American Car & Foundry Co., above referred to, correspond to the articles enumerated in the sworn statement of the Baldwin Locomotive Works, designated as "1" and "2."

T. D. 24350 of April 13, 1903; T. D. 24403 of May 2, 1903; T. D. 27592 of September 5, 1906; T. D. 30242 of January 8, 1910; T. D. 30306 of January 27, 1910; T. D. 33830 of November 3, 1913; and T. D. 34079 of January 22, 1914, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(97426.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36085.)

Drawback on canned pears.

Drawback on canned pears manufactured by W. W. Boyer & Co., of Baltimore, Md., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *January 22, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on canned pears manufactured by W. W. Boyer & Co., of Baltimore, Md., with the use of refined sugar produced in whole or in part from imported raw sugar.

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The quantity of refined sugar which may be taken as the basis for the allowance of drawback shall not exceed the quantity appearing in the exported pears, as shown by the sworn statement of the manufacturers, dated January 3, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules showing changes in the quantities of refined sugar used or covering other brands of canned pears may be filed, and upon verification of such supplemental schedules drawback may be allowed on the canned pears covered thereby.

Respectfully, ANDREW J. PETERS,
(103746–14.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 36086.)

Table covers or bedspreads in the piece.

Table covers or bedspreads in the piece, consisting of woven cotton fabric in the piece, upon which are printed at regular intervals designs of table covers or bedspreads, dutiable at the rate of 30 per cent ad valorem under the provisions of paragraph 266, tariff act of 1913, for articles made of cotton cloth, whether finished or unfinished.

TREASURY DEPARTMENT, *January 21, 1916.*

SIR: The department is in receipt of your letter of the 14th instant, relative to the classification of certain table covers and bedspreads in the piece, consisting of woven cotton fabric in the piece, upon which are printed at regular intervals designs of table covers or bedspreads.

Such merchandise, it appears, has heretofore been assessed with duty at the appropriate rates for cotton cloth under paragraph 252 of the tariff act, but it is now contemplated to change the classification to that of articles made of cotton cloth, finished or unfinished, dutiable at the rate of 30 per cent ad valorem under paragraph 266.

The merchandise, it appears from the report of the appraiser, consists of woven cotton cloth in the piece, 70 inches or over in width and about 30 yards in length, and has printed thereon designs of table covers and bedspreads, each of which designs is 2½ or 3 yards in size, and between the designs there is sufficient space to cut the cloth into separate table covers or bedspreads.

It appears that by reason of the designs and the intervening spaces between for separation purposes, the cloth in question is commercially unfit for any other use than to be cut into separate table covers or bedspreads, and that the character or identity of the individual articles is fixed with certainty in the merchandise in question. The

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department, therefore, following the principle enunciated by the United States Court of Customs Appeals in T. D. 34138 (note also T. D. 34243 and T. D. 35101), concurs in the views that the merchandise should be treated for dutiable purposes as if the articles were already cut apart, and that the merchandise is properly dutiable under the provision of paragraph 266 of the tariff act for articles made from cotton cloth, finished or unfinished.

As this classification will result in a change of practice, you will give the usual 30 days' time and will assess duty on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date thereof at the rate of 30 per cent ad valorem under the provision of said paragraph 266 of the tariff act of 1913 for articles made from cotton cloth, whether finished or unfinished, not specially provided for.

Respectfully, ANDREW J. PETERS,
(100487.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36087.)

Appraisers' returns on invoices.

Appraisers of merchandise will hereafter include in their returns on invoices provided for by article 582, Customs Regulations of 1915, a report as to the correctness of the invoice upon which entry was made.

TREASURY DEPARTMENT, *January 24, 1916.*

To appraisers of merchandise and other officers of the customs:

Your attention is invited to section 2899 of the Revised Statutes, which provides, among other things, that—

No merchandise liable to be inspected or appraised shall be delivered from the custody of the officers of the customs until the same has been inspected or appraised, or until the packages sent to be inspected or appraised shall be found correctly and fairly invoiced and put up, and so reported to the collector.

Appraisers of merchandise will hereafter include in their returns on invoices provided for by article 582 of the Customs Regulations of 1915 a report as to the correctness of the invoice upon which entry was made. In this regard their particular attention is invited to the regulations published in T. D. 34542 relating to the invoicing of merchandise. If they find the merchandise correctly invoiced, they will return "invoice correct" in column 7 of customs form Cat. No. 6417. If they find the invoice incorrect either as to prices or values stated or as to the form of invoice, they will return "invoice incorrect in following respects," specifying the particulars, and will withhold the examination packages from delivery until a delivery permit has been received from the collector.

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The collector of customs, upon the return of any invoice as incorrect by the appraiser, will make an inquiry to determine whether or not the incorrectness of such invoice is due to an intent to defraud the revenue, and, if necessary, will refer the matter to the special agent for investigation and report. If from such inquiry or investigation the collector is satisfied that there was no intent on the part of the shipper or the consignee to defraud the revenue or avoid the provisions of the customs laws, the collector will issue a permit for the delivery of the examination packages and notify the importer of the particulars in which the invoice is incorrect and instruct the entry clerks to particularly scan the invoices of such importer in the future in order to prevent a recurrence of such error.

If the inquiry or investigation shows that the invoice is incorrect because of a purpose or intention of depriving the United States of any part of the duties legally accruing upon the merchandise, the collector will make seizure and proceed with the forfeiture because of the provisions of paragraph H of section 3, act of October 3, 1913.

(92655–36.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36088.)

Neutrality—Radio apparatus of bunker coal steamers.

Collectors instructed as to the radio apparatus on bunker coal steamers which remain in port for a short time.

TREASURY DEPARTMENT, *January 24, 1916.*

SIR: Referring to T. D. 36017 and to your letter of the 12th instant, I have to state that in accordance with the advice of the Secretary of the Navy it is unnecessary to dismantle the radio apparatus of bunker coal steamers of belligerent countries which remain in port for so short a time that it is not necessary for them to enter and clear.

In such cases, however, you should deliver to the master of the vessel a copy of the printed instructions issued by the Navy Department, which are published in T. D. 36017, and inform him that as the vessel will not have to enter and clear he will not be required to seal his radio apparatus nor to lower his antenna, but that the apparatus must not be used in any way, either for transmitting or receiving, until after the vessel has cleared the limits of the port.

Respectfully, ANDREW J. PETERS,
Assistant Secretary.

(102574.)

COLLECTOR OF CUSTOMS, *Tampa, Fla.*

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(T. D. 36089—G. A. 7843.)

Wrapping paper with surface design.

Uncoated paper having a surface design and used chiefly for wrapping purposes is properly classifiable under the provision in paragraph 324, tariff act of 1913, for "uncoated papers * * * with the surface or surfaces wholly or partly decorated or covered with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise, except by lithographic process," and not under paragraph 328 of said act as "wrapping paper not specially provided for."—The rule applied in the case of Germania Importing Company *v.* United States (4 Ct. Cust. Appls., 29; T. D. 33221) followed.

United States General Appraisers, New York, January 17, 1916.

In the matter of protest 774293 of C. F. Hubbs & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Comstock & Washburn (*George J. Puckhafer* of counsel) for the importers.
Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question consists of wrapping paper with a surface design. Duty was levied thereon at the rate of 35 per cent ad valorem under the provision in paragraph 324 of the act of 1913 for "uncoated papers * * * with the surface or surfaces wholly or partly decorated or covered with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise, except by lithographic process." The claim alleged in the protest is that said merchandise is properly dutiable at the rate of 25 per cent ad valorem under paragraph 328 of said act as "wrapping paper not specially provided for."

Apparently neither the importers nor the Government disputes the fact that the paper under consideration is a wrapping paper with a surface design. The Government, however, contends, and we believe rightfully so, that the provision for surface-decorated paper is more specific than the general provision for wrapping paper not specially provided for.

The ruling of the United States Court of Customs Appeals in the case of Germania Importing Co. *v.* United States (4 Ct. Cust. Appls., 29; T. D. 33221) is clearly decisive of the issue here raised. That case arose under the tariff act of 1909 and involved the question whether the provision in paragraph 411 of that act for "imitation parchment papers which have been supercalendered and rendered transparent, or partially so, by whatever name known" was more specific than the provision in paragraph 415 for "wrapping paper

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not specially provided for." In holding the former to be the more specific provision, the court said:

> It need hardly be added that this specific enumeration of the article in question takes precedence over the general classification of wrapping paper not specially provided for in paragraph 415, which is proposed in the protest of the importers.

In their brief filed with the papers in this case counsel for the importers state that under the act of 1909 merchandise similar to that here involved became the subject of litigation, and they cite the case of Dunn *v.* United States (2 Ct. Cust. Appls., 65; T. D. 31627). In that case the competing provisions were "papers, including wrapping paper with the surface decorated or covered with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise, but not by lithographic process," as against "wrapping paper not specially provided for." In affirming the board's ruling in Abstract 23665 (T. D. 30768), holding the merchandise dutiable as a wrapping paper with a decorated surface, the court, commenting upon the argument advanced by appellants' counsel that to so classify the merchandise would result in fixing a rate of duty thereon of approximately 150 per cent ad valorem, said:

> It may be that giving the statute the construction which we think its unambiguous language demands will result in apparent inequality or injustice in this case; but if so, the remedy lies with Congress and not with the courts.

In enacting the provisions of paragraph 324 of the present act counsel for the importers here claim that Congress evidently took cognizance of the court's observation in the Dunn case, *supra*, by deliberately eliminating from said paragraph all reference to wrapping papers.

While we are unable to find any specific reference to that particular decision of the court in the record of the proceedings held before the Committee on Ways and Means or in the briefs and papers filed therewith during the period the committee had under advisement the framing of the provisions of the present paragraph 324, nevertheless an examination of such proceedings, briefs, and papers unquestionably shows that the matter of the alleged "inequality or injustice" claimed to have been due to the imposition on such merchandise of specific rather than ad valorem rates of duty was fully brought to the attention of the committee; and probably as a result of these representations, and in order that the new provisions should be free from the highly involved and complicated features complained of in the old, Congress evidently saw fit to rewrite and rearrange the different provisions, eliminating wherever possible any

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superfluous or unnecessary words and imposing upon the various classes of merchandise ad valorem rates of duty only.

In thus simplifying the general form of the paragraph Congress apparently deemed the expression "including wrapping paper" superfluous and unnecessary, because it is clear that even if paragraph 411 of the old act contained no reference whatever to wrapping paper, it would still have covered such wrapping paper as had a surface design. Hence the omission of such reference in the new paragraph manifestly makes no real change in its meaning or scope. Particularly is this true when it is observed that each of the provisions for (1) uncoated papers, gummed; (2) papers with the surface decorated or covered with a design; (3) cloth-lined papers; and (4) grease-proof and imitation parchment papers, is, in effect, qualified by the very comprehensive expression "by whatever name known." That it was not the intention of Congress to classify all wrapping papers, irrespective of their differences in character and value, under the general provision for wrapping papers not specially provided for is plainly obvious from the language of the very provision itself. Clearly, only such wrapping papers as are not specially provided for can be included therein, otherwise the words "not specially provided for" would be meaningless.

It is a matter of common knowledge and, in fact, has been so held by the board and the courts, that a very large if not the most predominant use of tissue paper is for wrapping purposes, but tissue paper is nevertheless specifically and *eo nomine* provided for. Likewise, grease-proof and imitation parchment papers are well known wrapping papers, but they too have been specially provided for. Cloth-lined or reinforced papers are largely used for wrapping purposes, and even surface-coated papers are sometimes so employed, but that fact would not militate against their classification under paragraph 324.

Moreover, in framing the language of the various provisions of paragraph 324 it is indeed significant that, at least with respect to some of the papers therein mentioned, Congress saw fit to make certain specified uses thereof the determining factor, if not the sole criterion, of their classification under said paragraph. For example, special provision is made for surface-coated papers which are suitable for covering boxes, also for surface-coated paper used for photographic purposes. Again, we find in said paragraph other provisions composed of language purely descriptive in character and intended to cover various papers made by different processes, but expressly unrestricted as to use. Of this class is the provision here under discussion for "uncoated papers * * * with the surface or surfaces wholly or partly decorated or covered with a design,

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fancy effect, pattern, or character, whether produced in the pulp or otherwise, except by lithographic process, * * * by whatever name known." As we view it, this language is entirely too plain and unambiguous to admit of the slightest misunderstanding concerning the congressional intent. It unquestionably embraces all papers answering the congressional description, with the single exception of those to which the lithographic process has been applied, and there is absolutely no proof that the paper here under consideration belongs to this excepted class.

All claims in the protest, including the unsupported claim that a discount of 5 per cent should be allowed on the duties collected by virtue of the provisions of paragraph J of subsection 7 of section 4 of the present tariff act, are hereby overruled, and the decision of the collector is affirmed.

(T. D. 36090—G. A. 7844.)

Silk fabrics—Nonimportation.

Certain silk piece goods were entered for duty at New York on a pro forma invoice which stated the number of units of length and the price per unit, but failed to state whether the measurement was in yards, meters, or other lineal unit. The entered value was the sum obtained by multiplying the price by the number of units of measurement. The appraiser passed the invoice as correct, and duty was assessed on the entered value. When the consular invoice was subsequently received the appraiser reported that the number of units of measurement stated in the pro forma invoice was excessive and that the correct measurements were those stated in the consular invoice. *Held,* that the case should be treated as one of shortage or nonimportation.

United States General Appraisers, New York, January 17, 1916.

In the matter of protest 780562 of Roth & Squiers against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges for the importers.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty,* special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* The goods in this case consist of woven fabrics in the piece, which were returned by the appraiser as being composed in chief value of silk or of artificial silk. The goods composed in chief value of artificial silk were assessed for duty by the collector at the rate of 60 per cent ad valorem under the provisions of paragraph 319, while those composed in chief value of silk were assessed for duty at the rate of 45 per cent ad valorem under paragraph 318, tariff act of 1913. Two claims are made in the protest, as follows:

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We claim that the said merchandise, No. 4134, is properly dutiable at 45 per cent as manufactures of silk, silk chief value, under paragraph 318, act of October 3, 1913. We further claim error in appraiser's return in not noting excess of meterage and reporting correctly the same.

With respect to the first claim, it appears from the record that the appraiser, in his "answer to protest," reported to the collector that the goods represented by quality 4134 were in fact composed in chief value of silk, as claimed, and that they had been erroneously returned as in chief value of artificial silk. This claim in the protest has been satisfied by the collector, as appears from an examination of the entry and from the following statement of the collector in his letter transmitting the protest to the board:

The classification issue raised herein was satisfied in reliquidation made since protest was lodged.

The second claim in the protest is that of "error in appraiser's return in not noting excess of meterage and reporting correctly the same."

It appears from the record that in the absence of a consular invoice the goods were entered on a pro forma invoice, which contains specifications giving the number of each piece and the quality number, with a series of numbers set opposite the piece and quality numbers intended to express the measurements of each piece, but the invoice fails to state the unit of measurement; that is to say, whether the measurements were in yards, meters, or other linear unit. The price of the goods, as stated in the invoice, varies from 1.20 marks to 2.30 marks, but the invoice fails to specify the unit of measurement to which these prices are to be applied. As a result of multiplying the aggregate measurement of the goods represented by the several quality numbers by their respective invoice prices and adding 10 marks for cases and packing charges, a total of 3,495.12 marks was obtained, and this was the invoice and entered value of the goods. The appraiser passed the invoice as correct. No appeal was taken to reappraisement, and the collector reports that "duty was assessed on the approved entered value as required by paragraphs I and M, section 3, act of 1913."

Paragraph K of section 3 of the tariff act of 1913 requires the appraiser "to ascertain, estimate, and appraise * * * the actual market value * * * of the merchandise * * *, and the number of yards, parcels, or quantities, * * * of every of them, as the case may require."

The appraiser, in his "answer to protest" above referred to, makes the following statement:

The balance of the protest claims that the length of the merchandise on the pro forma invoice which was before this office for appraisement is incorrect and that the correct length of said merchandise is as stated on the consular

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invoice, which is inclosed with the protest. The length as stated in pro forma invoice is as claimed in the protest incorrect and states an excessive length for the merchandise due to a clerical error in changing aunes to meters. The correct length of the merchandise is as stated in the consular invoice.

Agreeably to the request of counsel for the importers, which request was not objected to by the Assistant Attorney General, the appraiser's report has been admitted in evidence herein.

Counsel for the importers contend in their brief that the report of the appraiser, taken in connection with the consular invoice showing the lengths of the various pieces covered by the importation, indicates that duty was collected on merchandise which was never imported, and that the case should be treated as one of shortage or nonimportation within the rule announced in Marriott *v.* Brune (9 How., 619) and since followed in a long line of decisions.

We are inclined to concur in this view. We think that the fair inference to be drawn from the appraiser's report is that when he appraised the merchandise he considered the unit of measurement in the invoice to be meters. This seems to us the more reasonable when it is remembered that, in appraising the price of the various qualities, he must, of necessity, have determined the unit of measurement to which the price applied, and when he approved the invoice without making any change in the total measurements therein stated, he adopted such measurements as his "estimate" of the quantity of goods *in meters* in the importation. He now certifies, however, that the total number of meters stated in the pro forma invoice is excessive, and that the correct measurements are stated in the consular invoice.

We think this brings the case within the rule of shortage or nonimportation. As the merchandise consists of silk fabrics, the shortage or nonimportation is not within the exclusive remedy provided by paragraph X of section 3 of the tariff act of 1913, which applies only to "fruit or other perishable articles." Houlder *v.* United States (4 Ct. Cust. Appls., 247; T. D. 33480). The remedy provided by protest is open to the importer. United States *v.* Habicht (1 Ct. Cust. Appls., 53; T. D. 31031).

The protest is accordingly sustained, and the entry will be reliquidated on the basis of the number of meters stated in the consular invoice.

In reaching this conclusion we have not overlooked the case of De Liagre & Co. *v.* United States (6 Ct. Cust. Appls., —; T. D. 35989), wherein the facts were substantially the same as in the case at bar. There, however, the only question raised was one of manifest clerical error, and the court held that no relief could be granted under that claim, as the error was not manifest upon the invoice or the entry. No claim was made that the case was one of shortage or nonimportation, and hence that question was not passed upon.

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(T. D. 36091—G. A. 7845.)

Sliced beets in tins.

SLICED BEETS IN HERMETICALLY SEALED TINS—PREPARED VEGETABLES.

Sliced beets put up in hermetically sealed tins are dutiable under the provision in paragraph 200, tariff act of 1913, for "vegetables, if cut, sliced, or otherwise reduced in size, * * * or prepared in any way," rather than under paragraph 198, which provides for "beets of all kinds."

United States General Appraisers, New York, January 21, 1916.

In the matter of protest 774226 of Neuman & Schwiers Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*Jacob L. Klingaman* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Robert Hardison* and *Samuel Isenschmid*, special attorneys), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The goods involved in this case are invoiced as "sliced beets." The report of the appraiser, forwarded with the papers and admitted in evidence, reads as follows:

The merchandise marked "A" consists of sliced beets put up in hermetically sealed tins, returned for duty as prepared vegetables at 25 per cent ad valorem under paragraph 200, act of 1913, but should have been returned as beets at 5 per cent ad valorem, paragraph 198, act of 1913, as amended.

Duty was assessed under paragraph 200, above referred to, notwithstanding the report of the appraiser. The importer claims the goods are dutiable under paragraph 198. An additional claim for a 5 per cent discount under subsection 7 of paragraph J of section 4, tariff act of 1913, is overruled, as it was abandoned by counsel for the importers in the brief filed on their behalf.

The paragraphs in question read as follows:

198. Beets of all kinds, five per centum ad valorem.

200. Vegetables, if cut, sliced, or otherwise reduced in size, or if parched or roasted, or if pickled, or packed in salt, brine, oil, or prepared in any way; any of the foregoing not specially provided for in this section, and bean stick or bean cake, miso, and similar products, twenty-five per centum ad valorem.

The board had under consideration some time since what was known as the soya-bean case, G. A. 7689 (T. D. 35143). The statute (par. 606, tariff act of 1913) provides that soya beans shall be free. The particular beans in question had been cooked and put up in jars with a thick liquid substance. The board decided that the bean was so far changed as to be excluded from the naked provision for "soya beans," holding that that description was intended to cover the dry bean of commerce. The court held, however, that the term "soya beans" was intended to cover soya beans in any and all conditions, reversing the board. Note Brown & Co. *v.* United States (6 Ct. Cust. Appls., —; T. D. 35977). The importers now rely upon that decision.

We think this case is distinguishable from the soya-bean case. We

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have no means of knowing what kinds of beets these are. We are informed, however, that they are sliced and put up in hermetically sealed tins. We think it is a fair presumption that they have been peeled, and they may possibly have been cooked. They must have been partially cooked, judging from the description of the preparation which has been given them.

Under the law of 1909 beets and sugar beets were provided for in paragraph 250 in the following language:

250. Beets, twenty-five per centum ad valorem; sugar beets, ten per centum ad valorem.

Paragraph 198 of the law of 1913 takes the place of paragraph 250 of the law of 1909, the language of the present law being:

198. Beets of all kinds, five per centum ad valorem.

This, we think, clearly points to the fact that paragraph 198 was intended to cover simply the different varieties or kinds of beets which before had been distinguished by different rates of duty. The dutiable list, or the rate of duty clearly intended to be provided for in the tariff act, ought not to be reduced, in our judgment, without good reason. We are of the opinion that the phrase "beets of all kinds" has reference to the kind and variety of beet rather than the condition. If it had been intended to cover cooked beets, prepared beets, and sliced beets in hermetically sealed tins it would have been a simple matter to have added some expression covering their condition or state of preparation. Beets are a vegetable. If they have received such preparation as to take them out of the classification of beets intended to be covered by paragraph 198, they are of necessity dutiable under paragraph 200. We are of the opinion they are so dutiable.

The protest is therefore overruled.

(T. D. 36092—G. A. 7846.)

Lace wearing apparel—Underskirts.

Ladies' knitted underskirts trimmed around the bottom edge with hand-crocheted lace made from wool yarns are properly dutiable as wearing apparel made in part of lace under the provisions of paragraph 358, tariff act of 1913.

United States General Appraisers, New York, January 21, 1916.

In the matter of protests 768321, etc., of Al. G. Pritchard & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Importers not represented by counsel.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* The goods covered by these protests consist of ladies' knitted underskirts composed of wool, or of wool

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and cotton. They were returned by the appraiser as wearing apparel made in part of lace, and were assessed for duty by the collector at the rate of 60 per cent ad valorem under the provision in paragraph 358, tariff act of 1913, for "wearing apparel, * * * made wholly or in part of lace or of imitation lace of any kind; * * * of whatever yarns, threads, or filaments composed." The importer contends that the underskirts in question are not made in part of lace, and that they are properly dutiable either as cotton wearing apparel at the rate of 30 per cent ad valorem under paragraph 256 or as wool wearing apparel at the rate of 35 per cent ad valorem under paragraph 291 of said act.

When protest 768321 was called for trial the importer was sworn in his own behalf, and had admitted in evidence two samples representing the articles in question. The samples before us are ladies' knitted underskirts trimmed or ornamented at the bottom with what the Government contends is hand-crocheted lace. This lace is made from wool yarns, and is applied to the bottom edge of the garments in the form of small scallops, which, it appears from the record, are produced by hand crocheting. The importer admits that the lace is crocheted by hand. He contends, however, that it is not known and recognized in the trade as "lace," but is known as a "hand-crocheted finish." The importer has failed to introduce any testimony, other than his own, to show that the lace in question is not generally and uniformly known in the trade throughout the United States as "lace," and his testimony falls far short of being sufficient to establish that fact. The testimony of one witness, and he an employee of the importers, has been held to be insufficient to prove commercial designation. United States *v.* Oberle (1 Ct. Cust. Appls., 527; T. D. 31545).

The burden rested upon the importer to show by competent proof that the articles in question were not made in part of lace, as returned by the appraiser. In the absence of such proof the presumption of law is that the action of the classifying officer is correct. On the record before us protest 768321 must be, and it is hereby, overruled.

When the remaining protests (779992 and 780588) were called for trial the importer failed to appear in person or by counsel, or to offer any evidence to support his contention that the articles in question are not made in part of lace, as returned by the appraiser. The Assistant Attorney General, however, introduced the testimony of three witnesses, whose testimony stands uncontradicted, that the trimming or ornamentation on the bottom edge of the garments in question falls within that class of articles known and recognized in trade and commerce as "lace."

There is an official sample before us of the goods covered by these protests. This sample is the same as the samples representing the

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goods covered by protest 768321, *supra*. From an examination of the sample, unaided by any expert testimony, we should hesitate to say that the trimming or ornamentation thereon does in fact constitute lace, but the three witnesses called by the Government have so testified, and their testimony is uncontradicted. We therefore hold that the articles in controversy are wearing apparel made in part of lace, as returned by the appraiser.

The protests are accordingly overruled, and the decision of the collector in each case is affirmed.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, JANUARY 17, 1916.

No. 39104.—Protests 761622, etc., of American Express Co. (New York).

CHARCOAL, NOT PIGMENT.—Merchandise classified as black pigment at 15 per cent ad valorem under paragraph 53, tariff act of 1913, is claimed free of duty as charcoal not suitable for use as pigment under paragraph 447.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 37347 the merchandise in question was held free of duty as charcoal under paragraph 447.

No. 39105.—Protest 783315 of Dodge & Olcott Co. (New York).

BALSAM PERU, CRUDE.—It is claimed in this case that the merchandise in question is dutiable as balsam Peru, crude, at 10 per cent ad valorem, under paragraph 9, tariff act of 1913.

Opinion by MCCLELLAND, G. A. Upon stipulation of counsel that the merchandise in question is balsam Peru identical with that passed upon in Abstract 37722, it was held dutiable at 10 per cent under paragraph 9, as claimed.

No. 39106.—Protests 790174, etc., of P. J. Noel (Duluth).

CEDAR POSTS.—Merchandise described on the entries as "cedar fence posts" and "cedar posts," classified at 10 per cent ad valorem under paragraph 170, tariff act of 1913, is claimed entitled to free entry under paragraph 647.

Opinion by MCCLELLAND, G. A. It was held that the onus rested on the protestant to show by competent proof that the merchandise involved was fence posts and not paving posts, and he failed to do this. Protests overruled.

No. 39107.—Protest 792491 of Hensel, Bruckmann & Lorbacher (New York).

SPLIT BAMBOO.—Merchandise invoiced as split bamboo is claimed free of duty under paragraph 648, tariff act of 1913, and not dutiable at 15 per cent ad valorem under paragraph 176.

Opinion by MCCLELLAND, G. A. As it appears from the papers that no duty was assessed upon the merchandise in question the protest was dismissed.

No. 39108.—Protests 769290, etc., of Frank P. Dow Co. (Seattle).

GLASS SOUNDING TUBES.—So-called glass sounding tubes classified as manufactures of blown glass at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 95 or at 25 per cent under paragraph 94.

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Opinion by SULLIVAN, G. A. On the record the glass sounding tubes in question were held properly classified at 45 per cent under paragraph 84. G. A. 7234 (T. D. 31674) followed.

No. 39109.—Protests 756026, etc., of Hensel, Bruckmann & Lorbacher (New York).

GUM ARABIC—CRUDE GUM.—Merchandise classified as gum arabic at one-half cent per pound under paragraph 36, tariff act of 1913, is claimed free of duty as crude gum under paragraph 477.

Opinion by BROWN, G. A. Upon stipulation of counsel that the merchandise is identical with that which was the subject of Abstract 38356, the gum in question was held free of duty as crude gum under paragraph 477, as claimed.

No. 39110.—Protest 775938 of Butler Bros. (St. Louis).

TIN BANKS—TRICK MIRRORS—TOYS.—Tin banks used by children for the deposit of small coins, the sample representing a dog kennel with a slit at one end for the coin and a small door with lock on the bottom through which the coins may be withdrawn, and a dog in metal attached to one side, and trick mirrors consisting of a cardboard receptacle covered with imitation leather, having two peepholes on one side and at the other an opening through which the object viewed is reflected in a mirror-like article inside the box in a drawn-out or distorted form, with the words "Look and Laugh" printed in silver letters on the outside of the receptacle, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. It was found that a practical use for the tin banks was shown, and that they are therefore not toys within the rule of Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115). They were held dutiable as manufactures of metal at 20 per cent under paragraph 167. Protest overruled as to the mirrors.

No. 39111.—Protest 752656 of Geo. Borgfeldt & Co. (San Francisco).

METAL CASH BOXES OR BANKS—TOYS.—Cash boxes classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Under the rule in Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) these cash boxes and banks were found not to be toys. They were held dutiable as manufactures of metal at 20 per cent under paragraph 167, as claimed. Abstract 39110 followed.

No. 39112.—Protest 786780-57414 of Bernard, Judae & Co. (Chicago).

VIOLIN BOWS—PARTS OF MUSICAL INSTRUMENTS.—Violin bows classified as parts of musical instruments at 35 per cent ad valorem under paragraph 373, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 176, at 20 per cent under paragraph 167, at 8 per cent under paragraph 286, or at 10 or 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. The violin bows in question were held dutiable as parts of musical instruments under paragraph 373, as classified.

No. 39113.—Protest 770519 of Frank F. Foster (Portland, Me.).

COD TONGUES—FISH, BONED.

BROWN, *General Appraiser:* The collector at Portland, Me., in his certificate to the board, described the merchandise here involved as seven half barrels of pickled cod tongues. He classified it as boneless fish at three-fourths cent per pound under paragraph 216, act of 1913. It is claimed to be entitled to free entry under paragraph 483 as "all other fish not otherwise specially provided for."

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Boned fish would seem to presume fish meat from which bones previously existing had been removed. A fish tongue never contained bones, and therefore can never be said to have been boned.

It is not imported in tins, and it is hardly reasonable to assume that the Congress contemplated the taxation of fish tongues imported in barrels by any of the provisions of paragraph 216; but, on the contrary, it is more likely that it was intended to include this merchandise under the general catch-all provision in paragraph 483 providing for the free entry of all other fish not specially provided for. Thus holding, we sustain the protest.

No. 39114.—Protest 627726 of Mier & Martinez (San Juan).

FISH IN TINS—SUFFICIENCY OF PROTEST.

BROWN, *General Appraiser:* The merchandise here consists of sardines in tomato sauce. It was classified as fish in tins at 30 per cent under paragraph 270, act of 1909. It is claimed to be dutiable as fish prepared for preservation at three-fourths of 1 cent per pound under paragraph 273.

The case was suspended under suit 1471, which was later decided by the Court of Customs Appeals adversely to the importers. The issue involved was identical with that raised by this protest, and the court held that the provision for "all other fish (except shellfish) in tin packages" in paragraph 270, act of 1909, was more specific than the provision for "fish, fresh, smoked, dried, salted, frozen, packed in ice, or otherwise prepared for preservation, not specially provided for in this section," in paragraph 273 of said act. See Chee Chong & Co. *v.* United States, decided March 3, 1915 (5 Ct. Cust. Appls., 556; T. D. 35194), affirming G. A. 7602 (T. D. 34788). After the decision in that suit, this protest was submitted on the record. On the authority of those cases, the protest must be overruled.

Subsequent to the submission the counsel for the importer filed a brief claiming that "the merchandise is conceded to be sardines in tomato sauce and to be dutiable at one-half cent per pound under paragraph 272, act of 1909," and claims the protest is sufficient to raise this issue; that the protest fairly and reasonably apprised the collector of the objection of the importer; that the collector well knew the character of the goods, and knew by other protests of this importer which were sustained by the board, by the plain statement in the protest, viz, "200 cases of sardines in tins," and the further allegation in the protest that the fish in question was "prepared in tomato sauce"; that the collector knew that a proper claim was one-half cent per pound under paragraph 272, "when this and other importers were making protests in which that claim was also contained."

This argument is hardly sound as applied to the circumstances of the case at bar, because the protest plainly raises a clear issue which the collector fully sets forth in his report to the board, and he could not disregard the issue thus raised and consider that the protest really covered some other issue which had been raised by other protests of this importer or of other importers. His mind was naturally only directed to the issue plainly stated in the protest.

This is not a question of any error or indefiniteness in a protest which might be corrected by the collector's examination of the invoice and entry, appraiser's report, and samples. Such examination by the collector would only direct his mind to the clear-cut issue raised by the protest.

The protest must therefore be overruled.

No. 39115.—Protest 772293-55863 of Syme, Eagle & Co. (Chicago).

FISH, SKINNED OR BONED.—Merchandise classified as fish in tins at 15 per cent ad valorem under paragraph 216, tariff acts of 1913, is claimed dutiable as fish, skinned or boned, under the last part of the same paragraph.

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Opinion by BROWN, G. A. On the authority of G. A. 7720 (T. D. 35365), affirmed in Tokstad-Burger *v.* United States (6 Ct. Cust. Appls., —; T. D. 35981), the classification of the merchandise as fish in tins at 15 per cent under paragraph 216 was affirmed .

No. 39116.—Protests 770347, etc., of Scientific Materials Co. (Pittsburgh).

CHEMICAL COMPOUND.—The appraiser described the merchandise in question as a combination of salts. It was classified at 15 per cent under paragraph 5, tariff act of 1913, and is claimed free of duty as one of the sulphates of ammonia provided for in paragraph 395.

Opinion by BROWN, G. A. Protests unsupported; overruled.

No. 39117.—Protest 736535 of Franklin Simon & Co. (New York).

SILK WEARING APPAREL.—Merchandise described by the appraiser as wearing apparel composed of silk, trimmed with lace or net, composed in chief value of cotton appliquéd, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, and wool wearing apparel classified at 44 cents per pound and 60 per cent ad valorem under paragraph 382, tariff act of 1909, is claimed dutiable at 30 per cent under paragraph 261 or 256, tariff act of 1913, and at 40 per cent under paragraph 278, or 50 per cent under paragraph 317.

Opinion by BROWN, G. A. Protest unsupported; overruled.

No. 39118.—Protest 738203 of Gimbel Bros. (Philadelphia).

SILK FABRICS IN PART OF WOOL.—The appraiser reported the merchandise in question to be cloth composed of silk and wool, silk chief value. It was classified at 44 cents per pound and 55 per cent ad valorem under paragraph 381, tariff act of 1909, and is claimed to be silk chief value, dutiable at 45 per cent under paragraph 318.

Opinion by BROWN, G. A. On the authority of G. A. 7837 (T. D. 36046) the claim under paragraph 318 was sustained.

No. 39119.—Protest 750689 of Theodor Saifner (New York).

SILK DRESS GOODS.—Merchandise classified as dress goods in part of wool at 44 cents per pound and 55 per cent ad valorem under paragraph 381, tariff act of 1909, is claimed dutiable at 45 per cent under paragraph 318, tariff act of 1913, as woven fabrics in chief value of silk. The appraiser reports that the merchandise consists of dress goods composed of wool and silk, silk chief value.

Opinion by BROWN, G. A. On the authority of G. A. 7577 (T. D. 34599) and Hecht *v.* United States (5 Ct. Cust. Appls., 261; T. D. 34444), affirming Abstract 33777 (T. D. 33789), the dress goods in question were held dutiable under paragraph 318, tariff act of 1913.

No. 39120.—Protest 752915-50171 of Marshall Field & Co. (Chicago).

WOOL DRESS GOODS.—Dress goods claimed to be in chief value of wool, dutiable at 35 per cent ad valorem under paragraph 290, tariff act of 1913, were returned by the appraiser as woven fabrics in chief value of hair of the Angora goat, and classified at 40 per cent under paragraph 308.

Opinion by BROWN, G. A. From the evidence it was found that the fabrics are composed in chief value of wool of the sheep. They were held dutiable at 35 per cent under paragraph 290, as claimed.

No. 39121.—Protest 784943 of C. Bahnsen & Co. (New York).

MOHAIR PILE FABRICS.—The appraiser reported the merchandise in question to be pile fabrics composed in chief value of Angora goat hair. It was classified at 45 per cent under paragraph 309, and is claimed dutiable as cloth composed wholly or in chief value of wool at 35 per cent under paragraph 288.

Opinion by BROWN, G. A. Protest unsupported; overruled.

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BEFORE BOARD 2, JANUARY 17, 1916.

No. 39122.—Protests 781367, etc., of Comey & Johnson Co. (Cleveland).

BLOCKED STRAW HATS.—The question here is whether certain straw hats are blocked. They were classified at 40 per cent ad valorem under paragraph 335, tariff act of 1913, and are claimed dutiable at 25 per cent under the same paragraph.

HOWELL, *General Appraiser:* * * * Neither the importers nor the Assistant Attorney General have filed briefs in this case, and the only information we have as to the basis of the importers' claim that the hats in question are not blocked is that which we gather from the testimony. The inference to be drawn from the testimony is that it is the contention of the importers that as these hats receive their form during the process of construction or manufacture they are not in fact blocked hats; that a blocked hat is such a hat as is first made and afterwards receives its form or shape by stiffening it and then manipulating or molding it into form or shape "by pounding and pressing it on a block."

The only testimony in the case is that of a member of the importing firm, and it appears from his testimony that the hats in question "are formed to the block as they are made." There are before us two official samples of the hats in question. These hats are made from cotton threads and dyed or colored straw in its natural or unsplit condition, the separate strands of straw being held together by the cotton threads. The hats have high crowns and narrow brims, of which one side is curved slightly more than the other to give it style and effect.

The purpose of blocking a hat is to give it form and shape, and to make it ready and complete for the trimming which may be applied thereto. It appears from the testimony—and an examination of the samples confirms the proof—that the hats in their condition as imported are in proper form and shape to have the trimming applied thereto by the milliner without further manipulation or blocking.

On this record we find nothing that would justify us in disturbing the decision of the collector, which is presumptively correct, and the protests are accordingly overruled.

No. 39123.—Protest 780108 of Franklin Simon & Co. (New York).

WEARING APPAREL.—This protest relates to articles of wearing apparel which were classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. The goods in question consist of articles of wearing apparel made in part of ornaments, braids, or netting. Those found to be composed in chief value of silk were held dutiable at 50 per cent under paragraph 317, and those composed chiefly of wool were held dutiable at 35 per cent under paragraph 291. Protest sustained as to the silk wearing apparel and overruled as to the wool wearing apparel, the correct claim not having been made. G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., —; T. D. 35388) followed.

No. 39124.—Protests 757335, etc., of Kern, Loewi & Mendel, and protests 776925, etc., of B. Blumenthal & Co. (New York).

BEADED TRIMMINGS.—Trimmings, ornaments, and other articles made of beads or spangles and in part of netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinions by HOWELL, G. A. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., —; T. D. 35464) the articles in question, which were found

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to be in chief value of beads or spangles, were held dutiable at 50 per cent under paragraph 333, as claimed.

No. 39125.—Protest 784478 of C. A. Haynes & Co. (New York).

HATTERS' PLUSH.—Merchandise returned by the appraiser as plush composed in chief value of silk, classified at 50 per cent ad valorem under paragraph 314, tariff act of 1913, is claimed dutiable at 10 per cent under paragraph 382.

Opinion by HOWELL, G. A. It was found that the merchandise consisted of black plush of the same quality and width as that passed upon in G. A. 7678 (T. D. 35121). It was held dutiable at 10 per cent under paragraph 382, as claimed.

No. 39126.—Protests 785282-6200, etc., of May & Ellis (New Orleans).

LACES, INSERTINGS, AND EDGINGS.—Merchandise invoiced as laces, insertings, and edgings, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as Jacquard figured manufactures of cotton at 30 per cent under paragraph 258.

Opinions by HOWELL, G. A. Protests unsupported; overruled.

No. 39127.—Protests 728070, etc., of R. F. Downing & Co. et al. (New York).

SILK MUFFLERS.—Knitted silk mufflers, fringed, classified as silk wearing apparel at 50 per cent ad valorem under paragraph 317, tariff act of 1913, are claimed dutiable at 40 per cent under paragraph 315.

Opinion by HOWELL, G. A. On the authority of United States *v.* Lines (5 Ct. Cust. Appls., 552; T. D. 35193) the mufflers in question were held dutiable at 40 per cent under paragraph 315, as claimed.

BEFORE BOARD 3, JANUARY 17, 1916.

No. 39128.—Protest 790340 of Aug. Silz (New York).

GAME BIRDS.—Dead game birds, unplucked, invoiced as black plover and red partridge, classified at 30 per cent ad valorem under paragraph 227, tariff act of 1913, are claimed dutiable as game at 1½ cents per pound under the same paragraph.

Opinion by WAITE, G. A. Upon stipulation of counsel that the merchandise is of the same character as that which was the subject of G. A. 7670 (T. D. 35098), except that affidavits showing the destruction of the feathers have been filed, the game birds in question were held dutiable at 1½ cents per pound under paragraph 227, as claimed.

No. 39129.—Protests 787644, etc., of Geo. Borgfeldt & Co. (New York).

ALABASTER LAMPS—SCULPTURES—ENTIRETIES.—Lamp standards and globes, separated for duty purposes, and the globes classified under paragraph 98, tariff act of 1913, while the standards were classified as sculptures under paragraph 376, are claimed dutiable as entireties at 15 per cent under paragraph 376.

Opinion by WAITE, G. A. On the authority of Abstract 38174 the standards and globes were held dutiable as entireties at 15 per cent under paragraph 376, as claimed.

BEFORE BOARD 1, JANUARY 19, 1916.

No. 39130.—Protests 747621, etc., of Joseph Wild & Co. et al. (San Francisco, etc.).

SEA-GRASS FURNITURE—FURNITURE OF WOOD.—Furniture classified as in chief value of sea grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed to be wood chief value, dutiable at 15 per cent under paragraph 176.

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Opinion by McClelland, G. A. It was found that wood is the component material of chief value in each of the articles of furniture in question. It was therefore held dutiable at 15 per cent under paragraph 176.

No. 39131.—Protests 586748, etc., of Corsi, Zumsteg & Co. et al. (New York).

Fish in Tins.—Fish in tins classified at 30 per cent ad valorem under paragraph 270, tariff act of 1909, is claimed dutiable at one-half of 1 cent per pound under paragraph 272. Tunny fish packed in tins with capers, olives, and vinegar, classified as prepared vegetables at 40 per cent ad valorem under paragraph 252, is claimed dutiable under paragraph 272 or 273.

Opinion by Brown, G. A. Anchovies and sardines were held dutiable at one-half of 1 cent per pound under paragraph 272. United States *v.* Miller (5 Ct. Cust. Appls., 256; T. D. 34443) followed. The evidence as to the tunny fish shows that fish and not vegetables is the component material of chief value. It was held dutiable at 30 per cent under paragraph 270 in harmony with Abstract 36276 (T. D. 34704). As this claim was not made the protest was overruled.

No. 39132.—Protest 766735 of Ed. Whalley (New York).

Fish, Skinned or Boned.—Pickled salmon classified as fish, skinned or boned, at three-fourths of 1 cent under paragraph 216, tariff act of 1913, is claimed free of duty as fish not specially provided for under paragraph 483.

Opinion by Brown, G. A. On the authority of Woodward *v.* United States (6 Ct. Cust. Appls., —; T. D. 35918) the fish in question was held free of duty under paragraph 483, as claimed.

No. 39133.—Protests 733105, etc., of Swedish Produce Co. (Boston), and protests 741449-49306, etc., of Henry Horner & Co. (Chicago).

Fish, Skinned or Boned—Fish in Tins.—Merchandise classified as fish in tins at 15 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable as fish, skinned or boned, at three-fourths of 1 cent per pound under the last clause of this paragraph.

Opinions by Brown, G. A. On the authority of G. A. 7720 (T. D. 35365), affirmed in Tokstad-Burger *v.* United States (6 Ct. Cust. Appls., —; T. D. 35981), it was held that the provision for fish in tins controlled over that for fish, skinned or boned. Protests overruled.

No. 39134.—Protests 766097-52415, etc., of Marshall Field & Co. (Chicago).

Flannels.—Merchandise reported by the appraiser to consist of woven woolen fabrics, in the piece, of light weight and of the character used for women's dress goods, classified at 35 per cent ad valorem under paragraph 290, tariff act of 1913, is claimed dutiable as flannels at 30 per cent under paragraph 289.

Opinion by Brown, G. A. From the evidence it was found that the merchandise is used principally for underwear and night wear. It was held dutiable as flannels at 30 per cent under paragraph 289, as claimed. Abstract 38439 and G. A. 7772 (T. D. 35703) followed.

No. 39135.—Protests 786108, etc., of Brown & Roese et al. (New York).

Flannels.—It is claimed in this case that certain flannels are dutiable at 25 or 30 per cent ad valorem under paragraph 289.

Opinion by Brown, G. A. On the authority of G. A. 7772 (T. D. 35703), deciding that the term "flannels" includes woolen flannel materials used for certain outer garments, and also for pajamas, etc., it was held that the flannels here in question are dutiable at 25 or 30 per cent, according to the value per pound, under paragraph 289, as claimed.

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BEFORE BOARD 2, JANUARY 19, 1916.

No. 39136.—Protests 762471, etc., of H. A. Caesar & Co. (New York).

WOVEN SILK FABRICS—SILK VEILINGS.—Goods returned by the appraiser as silk veilings or silk trimmings, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as woven silk fabrics at 45 per cent under paragraph 318.

Opinion by HOWELL, G. A. On the authority of G. A. 7746 (T. D. 35563) it was held that the goods in question are dutiable as woven silk fabrics under paragraph 318, as claimed.

No. 39137.—Protests 768218, etc., of Shoninger Bros. (New York).

BEADED TRIMMINGS.—Trimmings, ornaments, and other articles made of beads or spangles and in part of netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be composed in chief value of beads or spangles, dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. The articles in question were found to be in chief value of beads or spangles, as claimed. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., —; T. D. 35464) they were held dutiable under paragraph 333.

BEFORE BOARD 3, JANUARY 19, 1916.

No. 39138.—Protest 787602 of H. A. Robinson & Co. (New York).

DOG BISCUIT, GROUND—COMMERCIAL DESIGNATION.—Merchandise invoiced as Osoko dog biscuits, classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, is claimed free of duty as biscuits under paragraph 417.

Opinion by HAY, G. A. It was found that the biscuits in question have been ground into small pieces to facilitate the feeding of a number of dogs at a time. It was held that the evidence does not show such commercial meaning for the word "biscuit" as would give to it a different meaning from its ordinary one. G. A. 7183 (T. D. 31377) and G. A. 7327 (T. D. 32271) cited. It was found that the merchandise is apparently identical with that which was passed upon in Abstract 37248. See also Abstract 37046 (T. D. 35000). The classification under paragraph 385 was affirmed.

No. 39139.—Protest 763738 of P. C. Kuyper & Co. (New York).

VEGETABLE ALBUMEN.—Merchandise invoiced as vegetable albumen and classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, is claimed to be free of duty as albumen under paragraph 392 or as wheat under paragraph 644.

Opinion by HAY, G. A. It was held that it was not shown by a preponderance of evidence that the commodity in question is albumen. Protest overruled.

No. 39140.—Protest 788109 of J. & H. Rosenberg (New York).

GALLILITH BUCKLES—BUTTONS.—Merchandise invoiced as gallilith buckles and classified as buttons under paragraph 339, tariff act of 1913, is claimed to be dutiable as nonenumerated articles under paragraph 385.

Opinion by HAY, G. A. It was found that the articles are buttons and they were held properly classified under paragraph 339.

No. 39141.—Protest 790387 of Palm Bros. Co. (Cleveland).

PRINTED PAPER—AMERICAN GOODS RETURNED.—Merchandise invoiced as transfer sheets and reported by the collector to be surface-coated paper, classified

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under paragraph 324, tariff act of 1913, is claimed free of duty as American goods returned under paragraph 404.

Opinion by HAY, G. A. It was found that one item on the invoice was manufactured in this country, while the others were manufactured abroad, printed in this country, and shipped abroad. As the regulations of the Secretary of the Treasury have not been complied with, free entry under paragraph 404 was denied.

BEFORE BOARD 1, JANUARY 21, 1916.

No. 39142.—Protest 787074 of Sing Fat Co. (San Francisco).

ORNAMENTAL FEATHERS.—Merchandise classified as ornamental feathers at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable at 20 or 40 per cent under the same paragraph.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

No. 39143.—Protests 763097, etc., of J. T. Steeb & Co. et al. (Seattle).

SPLIT BAMBOO.—Merchandise invoiced as split bamboo, classified as manufactures of wood at 15 per cent ad valorem under paragraph 176, tariff act of 1913, is claimed free of duty as wood, unmanufactured, under paragraph 648.

Opinion by MCCLELLAND, G. A. Upon stipulation of counsel that the merchandise is the same as that passed upon in United States *v.* Larzelere (6 Ct. Cust. Appls., —; T. D. 35502) it was held free of duty under paragraph 648, as claimed.

No. 39144.—Protest 773235 of Asiatic Export & Import Co. (Seattle).

TENNIS RACQUETS—TOYS.—Small tennis racquets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176, or as manufactures of catgut at 20 per cent under paragraph 366.

Opinion by SULLIVAN, G. A. The sample was found to be substantially constructed, neatly and well made, of two kinds of wood, strung with catgut, and the handle tipped with leather, apparently for use as a small tennis or ping pong racquet. It was found not to be a toy. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) and Abstract 37659 followed. Protest overruled, there being no evidence as to the component material of chief value.

No. 39145.—Protests 793705, etc., of Morimura Bros. et al. (Seattle and New York).

TENNIS RACQUETS.—Certain tennis racquets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 176.

Opinion by SULLIVAN, G. A. Upon the stipulation of counsel it was held that the tennis racquets in question are dutiable as manufactures of wood under paragraph 176, as claimed.

No. 39146.—Protest 785658 of Heinrich, Hermann & Weiss (New York).

SEWING OUTFITS.—Boxes, paper lined and covered with cotton, fitted with a pair of scissors, needles, sewing thread, and darning cotton, were classified at 35 per cent ad valorem under paragraph 342, tariff act of 1913. They were invoiced as wickerwork boxes. The appraiser reports that the sewing outfit is adapted only for the amusement of children and is properly dutiable under paragraph 342.

Opinion by SULLIVAN, G. A. The protest was submitted upon the appraiser's report and the official sample. Protest overruled, the presumption of correctness of the collector's action not having been overcome.

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No. 39147.—Protest 780596 of Heinrich, Herrmann & Weiss (New York).

SEWING BASKETS.—Wood or wicker baskets containing articles used for sewing purposes, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 173 or at 15 per cent under paragraph 176 or 185.

Opinion by SULLIVAN, G. A. The baskets were found to have a utilitarian purpose and were held dutiable at 25 per cent under paragraph 175. Protest overruled, that claim not having been made.

No. 39148.—Protest 771330-55822 of Sears, Roebuck & Co. (Chicago).

SEWING MACHINES—TOYS.—Small sewing machines classified as toys, at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed free of duty as sewing machines under paragraph 441.

Opinion by SULLIVAN, G. A. These small sewing machines are operated by hand instead of the usual foot pedal, the flywheel on the right of the machines having a handle attached thereto for that purpose. They were found to have a practical use and not to be toys. United States *v.* Ilifelder (1 Ct. Cust. Appls., 109; T. D. 31115) cited. They were held free of duty under paragraph 441, as claimed.

No. 39149.—Protest 768342-55298 of Marshall Field & Co. (Chicago).

RUBBER BALLS—TOYS.—Fancifully colored rubber balls classified at 35 per cent ad valorem under paragraph 342 ,tariff act of 1913, as toys, are claimed dutiable as manufactures of india rubber at 10 per cent or at 25 per cent under paragraph 369.

Opinion by SULLIVAN, G. A. Protest unsupported; overruled.

No. 39150.—Protests 775063, etc., of Sussfeld, Lorsch & Co. (New York).

TELESCOPES—TOYS.—Articles classified as toys at 35 per cent under paragraph 342, tariff act of 1913, are claimed dutiable as telescopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstract 38601 the telescopes in question were found to have a practical use and were held dutiable at 25 per cent under paragraph 94, as claimed.

No. 39151.—Protests 764418, etc., of Malhami & Co. et al. (New York).

MEDALS—MANUFACTURES OF METAL.—Medals plated with silver, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of Abstracts 38871 and 37533 the medals in question, which are used for religious purposes, were held dutiable under paragraph 167, as claimed.

No. 39152.—Protests 572281, etc., of Massce & Co. (New York).

JEWELRY.—Merchandise classified at 85 per cent ad valorem under paragraph 448, tariff act of 1909, is claimed dutiable at 60 per cent under said paragraph. Brass chain, classified at 50 per cent under paragraph 356, tariff act of 1913, is claimed dutiable at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel, slides, pendants, necklets with pendant, guards, bracelets, and slides and guards, classified as entireties, and unfinished chains, rope chains, unfinished rope chains, stipulated to be rope chain composed of rolled-gold plate not exceeding one-half of 1 inch in diameter, breadth, or thickness, valued at 30 cents per yard, imported in long lengths, to be used in the manufacture of watch chains, were held dutiable as jewelry at 60 per cent under paragraph 448. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536), United States *v.* American Express Co. (6 Ct. Cust. Appls., —; T. D. 35341), and Altman *v.* United States (6 Ct. Cust. Appls.,

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—; T. D. 35390) followed. Brass chain in lengths, valued at less than 30 cents per square yard, used in the manufacture of neck chains, lavallieres, etc., was held dutiable at 50 per cent under paragraph 356, tariff act of 1913, as classified. Abstract 38944 followed.

No. 39153.—Protests 791423, etc., of T. Woodward & Sons (Ogdensburg, etc.).

FISH, PARTLY BONED.—Merchandise classified as fish, boned, at three-fourths of 1 cent per pound under paragraph 216, tariff act of 1913, is claimed to be free of duty under paragraph 483.

Opinion by BROWN, G. A. Salt pickled salmon having the main spinal bone removed, packed in tierces and casks weighing 800 to 900 pounds each, was held free of duty under paragraph 483. Woodward *v.* United States (6 Ct. Cust. Appls., —; T. D. 35918) followed.

BEFORE BOARD 2, JANUARY 21, 1916.

No. 39154.—Protests 757167, etc., of Julius Loewenthal & Co. (New York).

BEADED TRIMMINGS.—Trimmings, ornaments, and other articles made of beads or spangles and in part of netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., —; T. D. 35464) the articles in question were held dutiable at 50 per cent under paragraph 333, as claimed.

No. 39155.—Protest 788697 of United Hosiery Co. (Boston).

SILK HAIR NETS.—Silk hair nets classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable under paragraph 317.

Opinion by HOWELL, G. A. On the authority of Abstract 36416 (T. D. 34756), affirmed in Proctor *v.* United States (6 Ct. Cust. Appls., —; T. D. 35387), the hair nets in question were held properly classified under paragraph 358.

(T. D. 36093.)

Emergency revenue law—Bonds and powers of attorney.

Bonds and powers of attorney required by T. D. 35969, in connection with export shipments, are not subject to internal-revenue tax under the act of October 22, 1914.

TREASURY DEPARTMENT, *January 25, 1916.*

SIR: The department refers to your letters of the 3d and 13th instant, requesting to be informed whether bonds required under T. D. 35969, and also whether the shipper's designation of an agent to attend to the exportation of shipments under said decision, are taxable under the internal-revenue act of October 22, 1914.

The Commissioner of Internal Revenue states that his office has held that export bonds, or transportation for export bonds, covering articles for export from the United States are not subject to stamp tax under the act of October 22, 1914, and that, therefore, as the bonds in question are required in relation to export shipments, the same are likewise exempt from tax.

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As the power of attorney or designation of an agent, as prescribed in T. D. 35969, is given in connection with the exportation of merchandise, the same would not be subject to internal-revenue tax, following the commissioner's reasoning in regard to bonds.

You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36094.)

Drawback on braids and trimmings.

Drawback on braids and trimmings manufactured by the Union Novelty Braid Works, of Garfield, N. J., with the use of imported artificial silk yarn.

TREASURY DEPARTMENT, *January 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on braids and trimmings manufactured by the Union Novelty Braid Works, of Garfield, N. J., with the use of imported artificial silk yarn.

A manufacturing record shall be kept, which will show, in the case of each lot of braids or trimmings manufactured for exportation with benefit of drawback, the date of manufacture thereof, the character of the article produced, the quantity thereof (length, width, and weight), the style number of the braid or trimmings, the quantity, value, and identity of the imported yarn used, the quantity of imported yarn used in the finished product, the quantity of waste resulting, and the value of such waste, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of artificial silk yarn used in the manufacture of the exported braids and trimmings, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

The sworn statement of the manufacturers, dated December 24, 1915, is transmitted herewith for filing in your office. Drawback may be allowed under these regulations on braids and trimmings exported on or after November 15, 1915.

Respectfully, ANDREW J. PETERS,
(104321.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36095.)

Drawback on medicinal preparations.

Drawback on "Wintersmith's Tonic," manufactured by Arthur Peter & Co., of Louisville, Ky., with the use of imported refined sugar, or refined sugar produced from imported raw sugar, and domestic tax-paid alcohol.—T. D. 24926 of January 20, 1904; T. D. 27094 of February 6, 1906; T. D. 30282 of January 18, 1910; and T. D. 31023 of November 3, 1910, revoked.

TREASURY DEPARTMENT, *January 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 886 of the Customs Regulations of 1915) on a medicinal preparation designated "Wintersmith's Tonic," manufactured by Arthur Peter & Co., of Louisville, Ky., with the use of imported refined sugar or refined sugar produced in whole or in part with the use of imported raw sugar and domestic tax-paid alcohol.

A manufacturing record shall be kept, which will show, in the case of each lot of "Wintersmith's Tonic" manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantities and identity of refined sugar and domestic tax-paid alcohol and the quantity of other materials used, and the quantity of "Wintersmith's Tonic" obtained. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback record.

The quantities of refined sugar and domestic tax-paid alcohol which may be taken as the basis for the allowance of drawback shall not exceed the quantities used in the manufacture of the exported medicinal preparation, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated December 28, 1915, is transmitted herewith for filing in your office.

T. D. 24926 of January 20, 1904; T. D. 27094 of February 6, 1906; T. D. 30282 of January 18, 1910; and T. D. 31023 of November 3, 1910, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(6136k.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36096.)

Drawback on rice.

T. D. 35204 of March 11, 1915, extended to cover coated or polished rice manufactured by M. J. Brandenstein & Co., of San Francisco, Cal., from imported brown or uncleaned rice.

TREASURY DEPARTMENT, *January 27, 1916.*

SIR: The department's regulations of March 11, 1915 (T. D. 35204), providing for the payment of drawback on unbleached or cleaned

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rice manufactured by M. J. Brandenstein & Co., of San Francisco, Cal., from imported brown or uncleaned rice, are hereby extended to cover coated or polished rice manufactured by the said company from imported brown or uncleaned rice.

The manufacturing record shall show, in addition to the data called for in T. D. 35204, the quantity and value of the coated or polished rice and of each other product obtained.

The sworn statement of the manufacturers, dated June 9, 1915, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(103278.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

(T. D. 36097.)

Drawback on blended flour.

Drawback on blended flour manufactured by Holt & Co., of New York, N. Y., with the use of imported flour.—T. D. 27581 of August 30, 1906, revoked.

TREASURY DEPARTMENT, *January 27, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on blended flour manufactured by Holt & Co., of New York, N. Y., with the use of imported flour.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated January 11, 1916, transmitted herewith, which will show, in the case of each lot of blended flour manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity of blended flour produced, and the quantity and identity of imported flour appearing therein. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

The allowance shall not exceed the quantity of imported flour appearing in the exported blended flour, as shown by the abstract from the manufacturing record.

T. D. 27581 of August 30, 1906, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(102789.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36098.)

Drawback on blended flour.

Drawback on blended flour manufactured by Shane Bros. & Wilson Co., of Philadelphia, Pa., with the use of imported flour in combination with domestic flour at their factories at Buffalo, N. Y., and Philadelphia, Pa.

TREASURY DEPARTMENT, *January 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on blended flour manufactured by Shane Bros. & Wilson Co., of Philadelphia, Pa., with the use of imported flour in combination with domestic flour at their factories located at Buffalo, N. Y., and Philadelphia, Pa.

A manufacturing record shall be kept in the manner prescribed in the sworn statements of the manufacturers, dated January 5 and 8, 1916, transmitted herewith, which will show, in the case of each lot of blended flour manufactured for exportation with benefit of drawback, the date of manufacture thereof, the quantity of blended flour produced, and the quantity and identity of imported flour appearing therein. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

The allowance shall not exceed the quantity of imported flour appearing in the exported blended flour, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on blended flour exported on or after October 14, 1915.

Respectfully, ANDREW J. PETERS,
(100284-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36099.)

Drawback on spectacles, eyeglasses, and goggles.

Drawback on spectacles, eyeglasses, and goggles manufactured by T. A. Willson & Co. (Inc.), of Reading, Pa., with the use of imported lenses.—T. D. 31647 of June 3, 1911, revoked.

TREASURY DEPARTMENT, *January 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on spectacles, eyeglasses, and goggles manufactured by T. A. Willson & Co. (Inc.), of Reading, Pa., with the use of imported lenses.

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A manufacturing record shall be kept, which will show, in the case of each lot of spectacles, eyeglasses, and goggles exported with benefit of drawback, the number of articles of each kind exported and the character, focus number, and identity of the imported lenses appearing therein. A sworn abstract from such record shall be filed with or made a part of the drawback entry. The allowance shall not exceed two imported lenses for each pair of spectacles, eyeglasses, or goggles exported.

The sworn statement of the manufacturers, dated August 23, 1915, and a supplemental sworn statement, dated December 8, 1915, are transmitted herewith for filing in your office.

T. D. 31617 of June 3, 1911, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(87719.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36100.)

Drawback on canned pears.

Drawback on canned pears manufactured by the Booth Packing Co., of Baltimore, Md., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *January 27, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on canned pears manufactured by the Booth Packing Co., of Baltimore, Md., with the use of refined sugar produced in whole or in part from imported raw sugar.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported canned pears, as shown by the sworn statement of the manufacturers, dated January 10, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules showing the changes in the quantity of refined sugar used or covering other brands or kinds of canned fruit may be filed, and upon verification of such supplemental schedules drawback may be allowed on the canned fruit covered thereby.

Respectfully, ANDREW J. PETERS,
(103746-19.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

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(T. D. 36101.)

Drawback on oil pull engines.

Drawback on oil pull engines manufactured by the Advance-Rumely Co. (Inc.), of Laporte, Ind., with the use of imported carburetors.—Former rate of drawback revoked.

TREASURY DEPARTMENT, *January 27, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on "oil pull" engines manufactured by the Advance-Rumely Co. (Inc.), of Laporte, Ind., with the use of imported carburetors.

The allowance shall not exceed one imported carburetor for each oil pull engine exported.

The sworn statement of the manufacturers, dated January 10, 1916, is transmitted herewith for filing in your office.

The department's unpublished regulations of September 15, 1915, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(90414.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36102.)

Drawback on toilet preparations.

Drawback on toilet preparations manufactured by the H. A. Perfumery Co., of San Francisco, Cal., with the use of domestic tax-paid alcohol and various imported materials.

TREASURY DEPARTMENT, *January 27, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 886 of the Customs Regulations of 1915) on a toilet preparation designated as "Florida Water," manufactured by the H. A. Perfumery Co., of San Francisco, Cal., with the use of domestic tax-paid alcohol and the several imported materials specified in the sworn statement of the manufacturers, dated January 5, 1916, transmitted herewith.

The allowance shall not exceed the quantities of imported materials and domestic tax-paid alcohol appearing in the exported Florida water, as shown by the sworn statement of the manufacturers mentioned above.

Drawback may be allowed under these regulations on Florida water exported on or after November 1, 1915.

Supplemental sworn statements covering other toilet preparations may be filed, and upon verification of such supplemental statements

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drawback may be allowed on the toilet preparations described therein.

Respectfully, ANDREW J. PETERS,
(104215.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

(T. D. 36103.)

Drawback on cuckoo clocks.

Drawback on cuckoo clocks manufactured by the American Cuckoo Clock Co., of Philadelphia, Pa., with the use of imported parts in combination with domestic parts.—T. D. 26714 of September 16, 1905, revoked.

TREASURY DEPARTMENT, *January 27, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of 1913 and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on cuckoo clocks manufactured by the American Cuckoo Clock Co., of Philadelphia, Pa., with the use of imported parts in combination with domestic parts.

A manufacturing record shall be kept, which will show, in the cases of each cuckoo clock manufactured for exportation with benefit of drawback, the serial number thereof and the number and identity of imported parts of each kind appearing therein. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

The allowance shall not exceed the number of imported parts of each kind appearing in the exported cuckoo clocks, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated December 13, 1915, is transmitted herewith for filing in your office.

T. D. 26714 of September 16, 1905, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(30751.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36104.)

Drawback.

Correcting printer's error in T. D. 36006 of December 20, 1915.

TREASURY DEPARTMENT, *January 28, 1916.*

SIR: Paragraph 4 of the department's regulations of December 20, 1915 (T. D. 36006), providing for the payment of drawback on

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kidney pills manufactured by the Foster-Milburn Co., of Buffalo, N. Y., is hereby corrected to read as follows:

Supplemental sworn statements showing changes in the quantities of refined sugar used or covering other kinds of pills manufactured with the use of refined sugar produced from imported raw sugar may be filed, and upon verification of such supplemental statements drawback may be allowed on the articles covered thereby exported on or after the date upon which the supplemental sworn statement was received.

Respectfully, ANDREW J. PETERS,
(101560.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36105.)

Drawback on hosiery.

T. D. 35429 of May 24, 1915, extended to cover hosiery manufactured by the Chipman Knitting Mills, of Easton, Pa., with the use of imported artificial silk fiber.

TREASURY DEPARTMENT, *January 27, 1916.*

SIR: The department's regulations of May 24, 1915 (T. D. 35429), providing for the payment of drawback on hosiery manufactured by Thompson Bros., of Milroy, Pa., with the use of imported artificial silk are hereby extended to cover hosiery manufactured by the Chipman Knitting Mills, of Easton, Pa., with the use of imported artificial silk fiber

The sworn statement of the manufacturers, dated December 30, 1915, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on hosiery exported on or after October 7, 1915.

Respectfully, ANDREW J. PETERS,
(95187-21.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36106.)

Drawback on mucilage, paste, and bottle stoppers.

Drawback on mucilage, paste, and bottle stoppers manufactured by Charles M. Higgins & Co., of Brooklyn, N. Y., with the use of imported materials.—T. D. 27010 of January 18, 1906, and T. D. 27106 of February 13, 1906, revoked.

TREASURY DEPARTMENT, *January 27, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(articles 855 to 881 of the Customs Regulations of 1915) on preparations designated as "H. T. mucilage," "Higgins' photo mounter," "Higgins' drawing board and library mucilage" manufactured with the use of imported dextrin, and on ink-bottle stoppers manufactured with the use of imported quills by Charles M. Higgins & Co., of Brooklyn, N. Y.

The allowance shall not exceed the quantity of imported material appearing in the exported article, as shown by the sworn statement of the manufacturers, dated December 29, 1915, which is transmitted herewith for filing in your office.

Supplemental sworn schedules covering other brands of mucilage and paste or showing changes in the quantity of imported dextrin used in the manufacture of the brands specified above may be filed, and upon verification of such supplemental sworn schedules drawback may be allowed on the mucilage or paste covered thereby.

T. D. 27010 of January 18, 1906, and T. D. 27106 of February 13, 1906, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(37713.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36107.)

Drawback on watchman's time detectors.

T. D. 36064 of January 14, 1916, extended to cover time detectors manufactured by the Nanz Clock Co., of New York, N. Y., with the use of imported material.

TREASURY DEPARTMENT, *January 28, 1916.*

SIR: The department's regulations of January 14, 1916 (T. D. 36064), providing for the payment of drawback on watchman's time detectors manufactured by the Newman Clock Co., of New York, N. Y., and Chicago, Ill., are hereby extended to cover watchman's time detectors manufactured by the Nanz Clock Co., of New York, N. Y.

The sworn statement of the manufacturing company, dated November 5, 1915, is transmitted herewith for filing in your office.

The department's unpublished instructions of April 29, 1903, and May 2, 1903, relating to drawback on the products of the Nanz Clock Co. are hereby revoked.

Respectfully, ANDREW J. PETERS,
(27781.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36108.)

Drawback on meter bearings.

Drawback on meter bearings and studs for meter bearings manufactured by the Diamond Cupped Bearing Co., of New York, N. Y., with the use of imported rough diamonds.

TREASURY DEPARTMENT, *January 28, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on meter bearings and studs for meter bearings manufactured by the Diamond Cupped Bearing Co., of New York, N. Y., with the use of imported rough diamonds.

The allowance shall not exceed one imported rough diamond for each meter bearing or stud exported.

The sworn statement of the manufacturing company, dated January 6, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after November 30, 1915.

Respectfully, ANDREW J. PETERS,
(104363.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36109.)

Drawback on refined molasses and sirups.

Drawback on refined molasses, sirups, and blends of the same manufactured by the Boston Molasses Co., of Boston, Mass., with the use of imported raw molasses, sirups produced from imported raw sugar, or with the use of such molasses and sirups in combination with domestic molasses and sirups.—T. D. 32022 of November 21, 1911, revoked.

TREASURY DEPARTMENT, *January 28, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on refined molasses, sirups, and blends of the same manufactured by the Boston Molasses Co., of Boston, Mass., wholly with the use of imported raw molasses or sirups resulting from the process of refining imported raw sugar, with the use of one in combination with the other, or with the use of one or both in combination with domestic molasses or sirups.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated January 10, 1916, and a sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of imported molasses and sirups produced from imported raw sugar which may be taken as a basis for the allowance

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of drawback shall not exceed the quantities appearing in the exported refined or blended product, as shown by the abstract from the manufacturing record.

T. D. 32022 of November 21, 1911, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(63243.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36110.)

Port of entry—Charlotte, N. Y., abolished.

TREASURY DEPARTMENT, *January 29, 1916.*

To collectors of customs and others concerned:

The appended Executive order, dated January 28, 1916, abolishing Charlotte, N. Y., as a port of entry in customs collection district No. 8, of which Rochester is the headquarters port, is published for the information of all persons concerned. Charlotte has been by the laws of the State of New York included within the corporate limits of and merged with the city of Rochester.

(90740-8.) ANDREW J. PETERS, *Assistant Secretary.*

EXECUTIVE ORDER.

Pursuant to the provisions of the act of Congress approved August 1, 1914, making appropriations for the sundry civil expenses of the Government for the fiscal year ended June 30, 1915, the port of entry at Charlotte, N. Y., located in customs collection district No. 8, of which Rochester is the headquarters port, is hereby abolished.

This order will be effective on and after February 1, 1916.

WOODROW WILSON.

THE WHITE HOUSE, *January 28, 1916.*

(T. D. 36111.)

Drawback on flavoring extracts.

Drawback on flavoring extracts manufactured by Magnus & Lauer, of San Francisco, Cal., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *January 29, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 886 of the Customs Regulations of 1915) on flavoring extracts manufactured by Magnus & Lauer, of San Francisco, Cal., with the use of domestic tax-paid alcohol.

A manufacturing record shall be kept, which will show, in the case of each lot or batch of flavoring extract manufactured for exportation with benefit of drawback, the lot number and date of manu-

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facture thereof, the quantity, proof, and identity of domestic tax-paid alcohol used, and the kind and quantity of flavoring extract obtained. The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported flavoring extracts, with a maximum of the quantity shown in the sworn statement of the manufacturers, dated January 13, 1916, which is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on flavoring extracts exported on or after October 12, 1915.

Supplemental sworn schedules showing changes in the quantities of domestic tax-paid alcohol used or covering other kinds of flavoring extracts may be filed, and upon verification of such supplemental schedules drawback may be allowed on the flavoring extracts covered thereby.

Respectfully, ANDREW J. PETERS,
(104132.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

(T. D. 36112.)

Drawback on flavoring extracts.

Drawback on flavoring extracts manufactured by Austin, Nichols & Co., of New York, N. Y., with the use of domestic tax-paid alcohol.—T. D. 29401 of December 10, 1908, revoked.

TREASURY DEPARTMENT, *January 29, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on flavoring extracts manufactured by Austin, Nichols & Co., of New York, N. Y., with the use of domestic tax-paid alcohol.

A manufacturing record shall be kept, which will show, in the case of each lot of flavoring extract manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, proof, and identity of domestic tax-paid alcohol used, and the kind and quantity of flavoring extract obtained. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry. The allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported flavoring extract, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated December 2, 1915, is transmitted herewith for filing in your office.

T. D. 29401 of December 10, 1908, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(57881.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36113.)

Drawback on veneers.

Drawback on ornamented or decorated veneers manufactured by George H. Jones, of New York, N. Y., with the use of imported plain veneers of wood.

TREASURY DEPARTMENT, *January 29, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on ornamented or decorated veneers manufactured by George H. Jones, of New York, N. Y., with the use of imported plain veneers of wood.

A record shall be kept, which will show, in the case of each lot of ornamented or decorated veneers manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof and the number of pieces, dimensions, and identity of the imported plain veneer of wood ornamented or decorated. An abstract from such manufacturing record shall be filed with or made a part of the drawback entry. The allowance shall not exceed one piece of imported plain veneer of wood for each ornamented or decorated piece of veneer of like kind and size exported.

The sworn statement of the manufacturer, dated January 14, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on ornamented or decorated veneers exported on or after December 8, 1915.

Respectfully, ANDREW J. PETERS,
(104389.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36114.)

Drawback on canned pineapple.

T. D. 35828 of October 6, 1915, extended to cover canned pineapple manufactured by the Haiku Fruit & Packing Co. (Ltd.), of Haiku, Maui, Hawaii, with the use of imported refined sugar or refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *January 29, 1916.*

SIR: The department's regulations of October 6, 1915 (T. D. 35838), providing for the payment of drawback on canned pineapple manufactured by the Hawaiian Pineapple Co. (Ltd.), of Honolulu, Hawaii, are hereby extended to cover canned pineapple manufactured by the Haiku Fruit & Packing Co. (Ltd.), of Haiku,

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Maui, Hawaii, with the use of imported refined sugar or refined sugar produced in whole or in part from imported raw sugar.

The sworn statement of the manufacturers, dated October 22, 1915, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(103746-21.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Honolulu, Hawaii.*

(T. D. 36115—G. A. 7847.)

Dolls' shoes—Toys.

1. Leather and cardboard dolls' shoes are properly dutiable as toys, and not free of duty as shoes made wholly or in chief value of leather.

2. When evidence is introduced showing that an article is a toy or part of a toy the general description "toy" is more applicable for tariff purposes than the specific name of the article which it resembles.

3. Paragraph 530 provides for free entry of shoes for use by human beings, and does not cover articles resembling shoes intended to cover the feet of dolls.

United States General Appraisers, New York, January 24, 1916.

In the matter of protests 744664–46148, etc., of Sears, Roebuck & Co. against the assessment of duty by the collector of customs at the port of Chicago.

[Affirmed.]

William K. Huber for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

SULLIVAN, *General Appraiser:* The merchandise in question consists of small shoes, assessed with duty at 35 per cent ad valorem under paragraph 342 of the tariff act of 1913 as parts of dolls or toys and claimed free of duty under paragraph 530 of the same act as shoes made wholly or in chief value of leather.

The evidence discloses that there were six different sizes of shoes on the invoice, the smallest being No. 4, and the largest No. 9. The sample pair in evidence (No. 9) is 3½ inches long by 1¾ inches wide at the widest point. The facts are, the shoes are used to cover the feet of dolls, and are not suitable for use by a child. The sample pair in evidence has white leather uppers to which are glued cardboard inner and outer soles. Each shoe is decorated with three small metal ornaments and three cheap white ribbon bows, and is fastened at the top with a cheap white ribbon tied in a bowknot. They are very flimsy, and we doubt whether they could be placed on the foot of a child, no matter how small. Their appearance indicates that

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even if they could be placed on the foot of a child they would be unfit for use as shoes. However, the protestants admit in their brief that they are so small that they are only suitable for dolls.

Does the statute contemplate the class of merchandise under consideration when it provides for free entry of "boots and shoes made wholly or in chief value of leather"? Was it not the thought of the legislative body that the boots and shoes entitled to free entry should be articles of utility to be worn by men, women, or children? Did it contemplate a tiny, flimsy shoe of leather that could not have any utilitarian purpose? The common understanding of a shoe is an outer covering or dress for the human foot, usually distinguished from a boot by not reaching above the ankle. This is practically the definition given by the dictionary. The article under consideration is not intended for the human foot.

No evidence of any utilitarian use of this merchandise was offered by the protestants. They rely entirely upon the wording of the statute, that boots and shoes made wholly or in chief value of leather are free, irrespective of how, by whom, or for what purpose used; that, so long as an article is a shoe made wholly or in chief value of leather, it is entitled to free entry for the reason that the term "boots and shoes" is a more specific description than the general terms "parts of dolls, * * * of whatever materials composed, * * * and all other toys, * * * not composed of china, porcelain, parian, bisque, earthern or stone ware, and not specially provided for." That may be true in a general sense, but when evidence is introduced showing that an article is a toy or part of a toy the general description "toy" is more applicable and is in fact more specific than that claimed. While evidently it was the intention of the statute to give free entry to boots and shoes of leather, yet it should be construed in the light of reason. It means boots and shoes for practical use, not an article fit only to cover the foot of a doll.

In the matter of protest 418998 of Pacific Mail Steamship Co., G. A. 7183 (T. D. 31377), General Appraiser Somerville, in dissenting from the majority of the board, who were of opinion that "parasols," being designated by name in the tariff act, was more specific than the general term "toys," said:

The only question involved in this case is whether the so-called parasols in question are toys within the meaning of paragraph 431 of the present tariff act of 1909 rather than parasols within the meaning of paragraph 478 of said act. The article is invoiced as a toy parasol, valued at 2.20 yen per dozen, or about 10 cents each. It is of a most flimsy construction, the wire ribs being made of an inferior and cheap quality of wire. The testimony shows that at the time the present tariff act went into effect the article was bought and sold in trade under the name of a toy parasol. It is shown amply by the testimony not to be fit for the uses for which ordinary parasols are commonly used; that it was on and prior to August 5, 1909, dealt in and sold as a toy to the toy trade, and

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is an article peculiarly suited for the amusement of children rather than for practical use. In other words, I am of the opinion that the article is a toy within the meaning of that term as commonly or commercially known, which is defined to be a "plaything; a thing used chiefly for the amusement or entertainment of children." The inspection of the sample corroborates the evidence to this effect. It can scarcely be supposed that Congress intended to include an article called a toy parasol, of this character, worth 10 cents, in the same category for tariff classification as a parasol used by adults, say worth $10, or a hundred times the value of that one under consideration. * * *

The logical effect of the decision as promulgated would be to hold that where any article is designated *eo nomine* in the tariff act, no article of the same name, however flimsy and cheap, whether designed for the amusement of children or not, would ever be classified as a toy. In my judgment this is an erroneous proposition of law, and the protest should be sustained.

The Court of Customs Appeals, on an appeal being taken thereto, Pacific Mail Steamship Co. *v.* United States (3 Ct. Cust. Appls., 102; T. D. 32361), while it affirmed the majority opinion of the board on the ground that the evidence failed to establish that the parasols were commercially known as toys, or that they were toys in fact, quoted with approval from Judge Somerville's opinion, and said:

We think, in view of what has been said, it is not the law that an article confessedly a toy within the commercial or ordinary meaning of that term must always be assessed under some paragraph other than the toy paragraph, because said other paragraph *eo nomine* described the merchandise by the name that for some purposes may be applied to it; therefore the board, in adopting this view of the law, committed error.

The court in that case also said:

As was well said by Townsend, Judge, in Downing *v.* United States (141 Fed., 490), where the merchandise involved simulated fans, was invoiced as fans, known as fans, and classified for duty as fans—

The name or designations applied to various articles in the invoice are merely indicative of the things which they represent. Thus another exhibit called a bell is not a bell; the so-called parasol is not a parasol; the so-called hat, although fitted with an elastic and capable of being put upon the head, is not a hat in the tariff signification.

So, in this case, the so-called shoes, although resembling shoes, are not shoes in the tariff signification, but toys.

The protests are overruled, and the collector's decision affirmed in each case.

(T. D. 36116—G. A. 7848.)

Canadian reciprocity act.

1. Wrapping Paper—Tariff Act of 1913.

Wrapping paper, which under section 2 of the act of July 26, 1911, was made free of duty under certain conditions named therein, is, under the tariff act of 1913, properly classified at 25 per cent under the provisions of paragraph 328.

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2. STATUTES REPEALED BY IMPLICATION.

The law does not favor repeal by implication. Where two laws relate to the same subject and have as their ultimate purpose the same object, the subsequent, being in conflict with the prior, repeals the same as effectively as if repealing it by express words. "The enactment of provisions inconsistent with those previously existing manifests a clear intent to abolish the old law."—Henrietta Mining & Milling Co. *v.* Gardner (173 U. S., 123); Henderson's Tobacco Co. (11 Wall., 657).

3. SECTION 2, ACT OF 1911, REPEALED BY ACT OF 1913.

Section 2 of the act of July 26, 1911, was repealed by the conflicting provisions of the tariff act of 1913. That this was the manifest purpose of Congress is clearly indicated by the repealing and saving clauses of paragraph S of section 4.

4. CONSTRUCTION OF A STATUTE—REPORTS AND OPINIONS OF CONGRESSIONAL COMMITTEES.

Information presented or legal opinions given to a committee of Congress is not the proper source from which to derive the congressional meaning, for the reason that, while it may have had an effect upon some or all of the members of the committee, it does not by any means show that it was the moving purpose of the deliberative body that enacted the law.—United Cigar Stores Co.'s case, G. A. 7026 (T. D. 30643).

United States General Appraisers, New York, January 24, 1916.

In the matter of protest 779190 of F. P. Dow Co. (Inc.) against the assessment of duty by the collector of customs at the port of Seattle.

Walden & Webster for the importers.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* The merchandise which was the subject of this protest was assessed for duty as wrapping paper under paragraph 328 of the tariff act of 1913. The case was submitted upon a stipulation which reads as follows:

It is hereby stipulated and agreed by and between counsel that the paper covered by the protest herein is valued at less than 4 cents per pound; that it was exported directly from Norway to this country; that it is the product of Norway; that no export duty, export license fee, or other export charge of any kind whatsoever or any prohibition or restriction in any way upon exportation has been imposed upon the paper covered by the above protests or upon the wood pulp used in the manufacture of said paper or the wood used in the manufacture of said wood pulp; and that said paper was manufactured only from wood pulp made in Norway from wood which was itself grown in Norway.

There is no question raised as to the proper classification of the merchandise, but it is claimed by the importers that it is free of duty under the provisions of section 2 of the act of July 26, 1911, by virtue of the operation of the most-favored-nation clause in the existing treaty between the United States and the country of exportation.

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This is the so-called Canadian reciprocity act (37 Stat. L., chap. 3), section 2 of which reads as follows:

SEC. 2. Pulp of wood mechanically ground; pulp of wood, chemical, bleached, or unbleached; news print paper, and other paper, and paper board, manufactured from mechanical wood pulp or from chemical wood pulp, or of which such pulp is the component material of chief value, colored in the pulp, or not colored, and valued at not more than four cents per pound, not including printed or decorated wall paper, being the products of Canada, when imported therefrom directly into the United States, shall be admitted free of duty, on the condition precedent that no export duty, export license fee, or other export charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise), or any prohibition or restriction in any way of the exportation (whether by law, order, regulation, contractual relation, or otherwise, directly or indirectly), shall have been imposed upon such paper, board, or wood pulp, or the wood used in the manufacture of such paper, board, or wood pulp, or the wood pulp used in the manufacture of such paper or board.

All of the act except section 2 was dependent for its legislative force upon the ratification by the Dominion of Canada. This the Dominion Government failed to do, and hence the act became inoperative, except section 2, which has been held to be positive law. Prior to the tariff act of 1913 that section was held to have repealed and taken the place of the provisions of the act of 1909, with which it was in conflict. In other words, section 2 was held to have repealed by implication all of the provisions in the law of 1909 for wood pulp which were covered by its provisions, either directly or by the operation of the most favored nation clause of treaties. The question presented by the case submitted upon this stipulation is, Is that section still in force, or did the law of 1913, either directly or by implication, repeal it?

Paper similar to that which is the subject of controversy in this case was provided for and rendered dutiable by the law of 1909. It became free of duty under the operation of section 2 of the so-called reciprocity act by reason of the fact that that act, being of a subsequent date and providing for the same commodity, took the place of and repealed, so far as that commodity was concerned, the law of 1909. As was stated in a recent decision, the human mind is capable of spinning theories so fine as to render innocuous all legislation, but the practical mind when earnestly seeking the meaning of the legislative body can generally find it in the language used. The law of 1913 provides a duty on wrapping paper such as is the subject of this protest. Being subsequent in enactment to section 2 of the Canadian reciprocity act, it, by implication at least, repeals that act and takes the place of it so far as this commodity is concerned. It is true that the law does not favor repeal by implication. Where two laws, however, relate to the same subject and have as their ultimate purpose the same object, the subsequent law, being in conflict with the prior,

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replaces the same as effectively as if repealing it by express words. In Henrietta Mining & Milling Co. *v.* Gardner (173 U. S., 123), the learned judge in delivering the opinion of the court used the following language in stating the rule of repeal by implication:

> Statutes are indeed sometimes held to be repealed by subsequent enactments, though the latter contain no repealing clauses. This is always the rule when the provisions of the latter acts are repugnant to those of the former, so far as they are repugnant. The enactment of provisions inconsistent with those previously existing manifests a clear intent to abolish the old law.

See also Henderson's Tobacco Co. (11 Wall., 657).

It is argued that section 2, *supra*, and the law of 1913 have not the same ultimate purpose and that the same subject matter was not involved; that the act of July 26, 1911 (the Canadian reciprocity act) was one to provide reciprocity between the United States and Canada, and the law of 1913 is a tariff law to provide for duties upon imported merchandise. It is true that the law of July 26, 1911, had as its main object reciprocity with Canada, but section 2, in its relation to the act of 1909, stood upon entirely different ground from the rest of that act. It was a tariff law in its effect, injecting into the free list of the tariff law then existing a new provision operating to render free, under the conditions named therein, certain merchandise then dutiable. When the law of July 26, 1911, failed by reason of Canada's failure to adopt the same, and section 2 remained, it remained as a part of the general tariff law of the country, creating a provision for free entry of certain merchandise under certain conditions. By the same rule, therefore, that section 2 repealed and took the place of the tariff law in existence at the time of its enactment, paragraph 328 of the law of 1913, so far as the merchandise here under consideration is concerned, repeals and takes the place of section 2.

Both the attorney for the importers and the Assistant Attorney General in their arguments in this case treat the question as though it was necessarily one of repeal by implication. The attorney for the importers insists that the repealing language of the act of 1913 has no effect and in its operation is meaningless. This seems to be conceded by the Assistant Attorney General, but it is contended that the manifest purpose of Congress is shown by certain information that was in the possession of the committee relative to the effect of this provision of law upon existing laws. Until a very recent date practically the unanimous current of judicial thought was to the effect that the debates of Congress and the opinions of committees and matters before such committees which might have operated upon the committee or its individual members are not a proper source from which to infer the meaning and purpose of the legislative body. Notwithstanding some recent decisions, we think the better current of

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authorities is still to this effect. In the United Cigar Stores Co.'s case, G. A. 7026 (T. D. 30643), this subject was discussed by this board in the following language:

Both counsel in their briefs have quoted somewhat at length from the debates in Congress at the time the statute in question was under consideration by that body, and we are urged to draw from these debates some conclusion as to the meaning of the language used. The debates in Congress, as was tersely stated by Justice Peckham in United States *v.* Trans-Missouri Freight Association (166 U. S., 318) "are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body." The courts, in seeking for the meaning of an act of Congress, will not have recourse to the individual opinions of Senators or Representatives expressed in debate when the same was under consideration, for the very pertinent reason that the opinion of this Senator or that Representative may not have been the opinion of the others whose votes were essential to the passage of the act. Or, if the opinion of one body of Congress could be ascertained, it would not necessarily follow that the other body, in the passage of the act, was moved by the same understanding as to its meaning. The debates in Congress, therefore, may be resorted to in the construction of a statute only in connection with and as a part of the public history of the times in which it was passed, for the purpose of determining, not from the individual opinions of men, but from the general history of the times, the purpose that the statute in question was intended to accomplish. United States *v.* Union Pacific Railroad Co. (91 U. S., 72); Aldridge *v.* Williams (3 How., 24); Mitchel *v.* Great Works Milling & Manufacturing Co. (2 Story, 648); United States *v.* Trans-Missouri Freight Association (166 U. S., 290); United States *v.* Wilson (58 Fed., 768).

If this reasoning is correct, and we still believe it to be, information presented or legal opinions given to a committee of Congress is not a proper source from which to derive the congressional meaning, for the simple reason that, while it might have had an effect upon some or all of the members of the committee, it does not by any means show that it was the moving purpose of the deliberative body that enacted the law. The repealing clause of the act of 1913 does, however, shed some light upon the meaning and intent of Congress with respect to section 2, *supra.* This repealing clause is found in the following language of paragraph S of section 4 of the tariff act of 1913, "all acts and parts of acts inconsistent with the provisions of this act are hereby repealed." Then follows a proviso saving from its operation a large number of provisions of existing law. This is the expression not of a committee, not of the House of Representatives, not of the Senate, but of Congress, and makes clear, we think, that it was the intention and purpose of that body to repeal all laws that were inconsistent with any provision of the act except those that were by express words saved from the repealing provision. And the additional fact that Congress did by this act expressly save from the operation of the repealing clause many provisions of existing law that might have been held to have been repealed by implication, and that it failed to save from its operation the provisions of section 2, *supra.*

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adds force, we think, to the conclusion that it was the intent of Congress that it should come under the all-embracing language of the repealing clause. Had section 2, *supra*, not been in existence there could be no question but that the merchandise under consideration would be properly classifiable under paragraph 328. Paragraph 328, being subsequent legislation, takes the place of and repeals section 2 so far as the merchandise here under consideration is concerned. This is in harmony with this board's views expressed in a very brief opinion in Kupfer Bros. Co., Abstract 37914, and Frank P. Dow *et al.*, Abstract 37974.

The protest is overruled.

(T. D. 36117—G. A. 7849.)

Blanket protest.

A protest against the assessment of duty which does not set forth distinctly and specifically the reasons for protestants' objection to the collector's classification of merchandise and in which are made multifarious and inharmonious claims, *Held*, not to be in conformity with the requirements of subsection 14 of section 28 of the tariff act of 1909.—Lichtenstein *v.* United States and Zimmerman *v.* United States (1 Ct. Cust. Appls., 79; T. D. 31105) cited.

United States General Appraisers, New York, January 26, 1916.

In the matter of protests 589123, etc., of Massce & Co. against the assessment of duty by the collector of customs at the port of New York.

Strauss & Hedges (*A. R. Brown* and *John F. Strauss*) for the importers.

Bert Hanson, Assistant Attorney General (*Leland N. Wood* and *Chas. D. Lawrence*, of counsel), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

McClelland, *General Appraiser:* The merchandise which is the subject of these protests is invoiced as "blue-green oxide." The appraiser's returns are as follows: On invoice No. 18636, "chromium, aluminum cobalt, iron oxides, and silica," and on the other three invoices "ceramic colors." The collector assessed it with duty at the rate of 30 per cent ad valorem under paragraph 56 of the tariff act of 1909, but there is nothing to indicate in the report of the collector's action in assessing duty which one of the many articles described in paragraph 56, *supra*, it was held to be.

The protests state the grounds of objections to the collector's classsification and the alternative claims made as follows:

The reasons for the objection, under the tariff act of August 5, 1909, are as follows: Said merchandise is covered by and is dutiable under paragraph 110 at only 25 per cent ad valorem, or paragraph 52 at only 4¼ cents per pound or at only 10 cents per pound, or paragraph 46 at only 4⅝ cents per pound, or paragraph 50 at only 3 cents per pound, or paragraph 55 at only 1 cent per

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pound or at only 1¼ cents per pound, or paragraph 43 at only 8 cents per pound, or paragraph 48 at only 3¼ cents per pound, or paragraph 49 at only 2⅝ cents per pound, or paragraph 57 at only 15 per cent ad valorem, or paragraph 58 at only 2 cents per pound or at only 2½ cents per pound or at only 3 cents per pound, or paragraph 3 at only 25 per cent ad valorem, or paragraph 183 (as metallic mineral substances) at only 20 per cent ad valorem, or paragraph 480 at only 20 per cent ad valorem.

The parts of the law referred to in above claims are the only, or the most apt and specific, ones for said merchandise or artcles and should control the classification. The above claims severally and colectively are alternatively made under the paragraphs or sections referred to, both directly, and by similitude and component materials or otherwise as provided in paragraph 481, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning, or usage, controlling force of chief use and chief component in value, and by all statutory, judicial, or other rules for the construction of the law; hereby reserving all questions of law and facts.

We are decidedly of the opinion that these protests do not comply with the statute in that they do not set forth "distinctly and specifically" the reasons for protestants' objection to the collector's assessments of duty.

The claims are multifarious and the paragraphs cited cover many different kinds of merchandise, as shown by the following:

Paragraph 110 covers fusible enamel; paragraph 52 covers vermilion reds; paragraph 46, chrome colors; paragraph 50, ultramarine blue; paragraph 55, oxide of zinc, dry, or ground in oil, sulfid of zinc white, and chloride of zinc; paragraph 43, blue containing ferrocyanide of iron, in pulp, dry or ground in or mixed with oil or water; paragraph 48, orange mineral; paragraph 49, red lead; paragraph 57, Paris green; paragraph 58, acetate of lead, white, brown, gray, or yellow, nitrate of lead and litharge; paragraph 3, alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all chemical compounds, and many other kindred commodities; paragraph 183, metallic substances in a crude state, and metals unwrought, whether capable of being wrought or not; and paragraph 480, what is commonly called the "catch-all clause," for articles manufactured in whole or in part not otherwise provided for.

It has been repeatedly held that the primary function of a protest is to not only direct the collector's attention to the fact that it is claimed that he had made an error in classification, but in addition, to present to the collector in such form as would lead him, if he was satisfied that an error had been made, to make the proper classification. If it were to be assumed that after duty had been assessed in each of these cases the collector did become satisfied that his assessment was erroneous, it is certainly manifest that there is nothing in either one of these protests that would direct his attention to the one of the 13 paragraphs named upon which protestants relied,

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or as to which one of the many kinds of merchandise covered by these paragraphs protestants claimed the merchandise in question to be.

In view of the plain language of the statute—subsection 14 of section 28 of the act of 1909—under which these protests were filed, it is incomprehensible that any intelligent protestant, especially one having counsel learned in the law, can hope to succeed in reversing the collector's classification by lodging with him protests in which are made such multifarious and inharmonious claims.

As was said by Presiding Judge Montgomery, writing for the Court of Customs Appeals in Lichtenstein *v.* United States and Zimmerman *v.* United States (1 Ct. Cust. Appls., 79, T. D. 31105), in passing upon the sufficiency of a protest—

> This protest is misleading rather than informing. This obscurity results from a pernicious method of attempting to throw upon the collector and the courts the burden which properly rests upon the protestant of fairly apprising the collector and the court of *real* claims as distinguished from possible claims, which might be appropriately made with reference to goods not involved in the importation in question.

The protests are dismissed for the reasons that they are vague and indefinite and do not comply with the statute.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, JANUARY 24, 1916.

No. 39156.—Protest 776312 of E. McConnell & Co., protests 781306, etc., of Abraham & Straus et al., protest 781891 of Oscar Hofmann, and protests 782642, etc., of Brooks Bros. et al. (New York).

FLANNELS—FIGURED COTTON CLOTH.—Merchandise classified as wool cloth or dress goods, under paragraph 288 or 290, tariff act of 1913, is claimed dutiable as flannels at 25 or 30 per cent ad valorem under paragraph 289. Jacquard figured cotton cloth classified at 30 per cent under paragraph 258 is claimed dutiable under paragraph 252.

Opinions by BROWN, G. A. On the authority of G. A. 7772 (T. D. 35703) the flannels in question were held dutiable under paragraph 289, as claimed. Figured cotton cloth was held dutiable under paragraph 252 on the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501).

No. 39157.—Protests 770617-55284, etc., of R. B. Boak & Co. et al. (Chicago).

FISH IN TINS.—Merchandise classified as fish in tins at 25 and 15 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable as fish, skinned or boned.

Opinion by BROWN, G. A. Protests unsupported; overruled.

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No. 39158.—Protests 768222, etc., of Thos. Meadows & Co. et al. (New York).

VACCINE VIRUS.—Vaccine virus and serums in ampoules, classified at 25 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed free of duty under paragraph 400.

Opinion by BROWN, G. A. On the authority of Abstract 37925 vaccine virus and serums in ampoules were held properly classified at 25 per cent under paragraph 17.

No. 39159.—Protests 785495, etc., of Dingelstedt & Co. (New York).

LANOLIN.—Merchandise classified as lanolin at 1 cent per pound is claimed dutiable as wool grease, refined, at one-half of 1 cent per pound under the provisions of paragraph 44, tariff act of 1913.

Opinion by BROWN, G. A. Protests unsupported; overruled.

BEFORE BOARD 2, JANUARY 24, 1916.

No. 39160.—Protest 739657 of J. T. Steeb & Co. (Seattle).

HEMP BRAIDS.—Manila hemp braids classified as bleached, at 20 per cent ad valorem under paragraph 335, tariff act of 1913, are claimed not bleached, dutiable at 15 per cent under the same paragraph.

Opinion by HOWELL, G. A. It was found that the braids in question have not been bleached, dyed, colored, or stained. They were held dutiable at 15 per cent under paragraph 335, as claimed.

No. 39161.—Protest 787762 of Geo. Borgfeldt & Co. (New York).

ELASTIC BRAIDS.—This protest is against the classification of elastic braids at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. Protest unsupported; overruled.

No. 39162.—Protests 764890, etc., of John Hood & Co. et al. (New York).

TOWELS—WASH RAGS—BATH MATS—PILE FABRICS.—Turkish towels, wash rags, bath mats, and sheets, classified as pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable under paragraph 264.

Opinion by COOPER, G. A. On the authority of G. A. 7656 (T. D. 35019) cotton towels, wash rags, bath mats, and sheets were held dutiable at 25 per cent under paragraph 264, as claimed.

No. 39163.—Protests 740300, etc., of T. D. Downing & Co. et al. (New York).

VELVET TABLE COVERS.—Merchandise classified as cotton velvet articles at 40 per cent ad valorem under paragraph 257, tariff act of 1913, is claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

Opinion by COOPER, G. A. The merchandise invoiced as velvet table covers, couch covers, cotton couch covers, couch covers cotton pile fabrics, and cotton table rugs was found to be of the same character as the articles passed upon in Downing *v.* United States (6 Ct. Cust. Appls., —; T. D. 35984). They were held dutiable at 35 per cent under paragraph 258, as claimed.

No. 39164.—Protests 772253, etc., of Edwin Wasser (New York).

FIGURED COTTON CLOTH.—Cotton cloth classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501), the figured cotton cloth in question was held dutiable under paragraph 252, as claimed.

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BEFORE BOARD 3, JANUARY 24, 1916.

No. 39165.—Protests 779347, etc., of Geo. Borgfeldt & Co. (New York).

ALABASTER LAMPS—ENTIRETIES—SCULPTURES.—Alabaster lamps and bowls classified as manufactures of alabaster under paragraph 98, tariff act of 1913, are claimed dutiable as sculptures under paragraph 376.

Opinion by WAITE, G. A. Certain bowls and globes which were found with their standards to constitute entireties were held dutiable as works of art under paragraph 376. Abstract 38174 noted.

No. 39166.—Protests 782102, etc., of Kern Commercial Co. et al., protest 782135 of Chas. F. Hubbs & Co., and protest 782137 of Merchants Importing Co. (New York).

WOOD PULP AND PAPER—FAVORED NATIONS.—Paper which was classified as dutiable under the tariff act of 1909 is claimed to be free of duty under the provisions of section 2, act of July 26, 1911, by virtue of the favored-nation clause in existing treaties.

Opinions by HAY, G. A. On the authority of American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) the wood pulp and paper in question was held entitled to free entry.

No. 39167.—Protest 786779 of Stix-Baer-Fuller Dry Goods Co. (St. Louis).

VALUE.—It is claimed in this protest that certain dresses are secondhand and of less value than that upon which duty was assessed.

Opinion by HAY, G. A. The protest, which raises a question of value, dismissed.

BEFORE BOARD 2, DECEMBER 23, 1915.

No. 39168.—Protest 785619–57350 of Loomis Scrap Iron Co. (Chicago).

PIPES, DEFECTIVE.—Merchandise described by the appraiser as unused butt-welded iron and steel pipe which comes from the mill defective for high pressure purposes, classified at 20 per cent ad valorem under paragraph 127, tariff act of 1913, is claimed to be fit only for remanufacture, free of duty under the provisions of paragraph 518.

FISCHER, *General Appraiser:* * * * With respect to the merchandise in question, these facts are conclusively established by the uncontradicted testimony submitted on behalf of the importers: (1) That while the pipe under consideration is new, it nevertheless contains sufficient defects and imperfections to warrant its rejection by the manufacturers; (2) that the defective and broken pipes are sold by the importers as scrap for purposes of remelting, while the remainder is used for various purposes, such as flagpoles, fences, guard rails, and the like, but that it is not fit to withstand steam or water pressure; (3) that of the 71,387 pounds involved in the present shipment 40,000 pounds thereof are fit only to be remelted, while the balance is capable of being used as herein indicated. The protest is therefore sustained in so far as it purports to cover the 40,000 pounds fit only for remelting, and it is overruled as to the balance of the merchandise. [This is in correction of Abstract 38979.]

BEFORE BOARD 1, JANUARY 26, 1916.

No. 39169.—Protests 776332, etc., of M. A. Graser-Rothe (Cleveland).

RATTAN REEDS.—So-called Chinese rattan reeds manufactured from rattan, classified at 10 per cent ad valorem under paragraph 173, tariff act of 1913, are claimed to be free of duty under paragraph 648.

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Opinion by McClelland, G. A. The reeds in question appear to be generally used, without further treatment than being cut into lengths, in the making of baby carriages and other articles of furniture, but the processes of manufacture were not shown, nor do the reeds appear to be in the crudest form in which reeds are imported. Protests overruled. Foppes *v.* Magone (40 Fed., 570) cited.

No. 39170.—Protests 781288, etc., of W. A. Brown & Co. et al. (New York).

Bamboo Lamp Shades.—Colored bamboo lamp shades classified at 25 per cent ad valorem under paragraph 175, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 176.

Opinion by McClelland, G. A. On the authority of G. A. 7804 (T. D. 35848) colored bamboo lamp shades were held dutiable at 15 per cent under paragraph 176, as claimed.

No. 39171.—Protests 786547, etc., of J. T. Steeb & Co. et al. (Seattle and New York).

Straw Mats.—Straw mats or rugs classified at 25 per cent ad valorem under paragraph 368, tariff act of 1913, are claimed dutiable under paragraph 272 or 385.

Opinion by McClelland, G. A. On the authority of Akawo *v.* United States (6 Ct. Cust. Appls., —; T. D. 35921), affirming G. A. 7724 (T. D. 35384), the straw mats or rugs in question were held properly classified under paragraph 368.

No. 39172.—Protests 782573, etc., of A. Klipstein & Co. (New York).

Bone Black, not Pigment.—Merchandise invoiced as "decolorizing powder" and "char for decolorizing purposes," classified at 15 per cent ad valorem under paragraph 53, tariff act of 1913, is claimed entitled to free entry under paragraph 423 or 447.

Opinion by McClelland, G. A. On the authority of Abstract 37347 the merchandise in question was held entitled to free entry as bone black not suitable for use as pigment under paragraph 447.

No. 39173.—Protest 777573 of F. A. Patrick & Co. (Duluth).

Lambskin Gloves.—Gloves invoiced as schmaschen, classified as lambskin at $2.25 per dozen pairs under paragraphs 363 and 364, tariff act of 1913, are claimed dutiable at $1.25 per dozen pairs under paragraphs 362 and 364.

Opinion by McClelland, G. A. On the record presented the protest was overruled.

No. 39174.—Protest 768338 of C. J. Tower (Buffalo).

Golf Balls.—Golf balls classified under the provision in paragraph 369, tariff act of 1913, for "hard rubber" at 25 per cent ad valorem, are claimed dutiable as manufactures of india rubber at 10 per cent under paragraph 368.

Opinion by McClelland, G. A. Protest unsupported; overruled.

No. 39175.—Protest 790407 of C. Wildermann Co. (New York).

Silver Medals.—Articles described by the appraiser as religious medals composed of silver and glass, silver chief value, valued above 20 cents per dozen pieces, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 or 50 per cent under paragraph 167.

Opinion by Sullivan, G. A. The medals in question were found to be dutiable at 50 per cent under paragraph 167. Abstracts 37664 and 38871 followed.

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No. 39176.—Protest 787497 of C. Silverman (New York).

TELESCOPES—TOYS.—Articles classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as telescopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. The telescopes in question were found to have a utilitarian value and held dutiable at 25 per cent under paragraph 94, as claimed. Abstract 38601 followed.

No. 39177.—Protest 786244 of Levy & Merzbach (New York).

PARTS OF HANDBAG CLASPS.—Merchandise returned as dress ornaments designed to be used on wearing apparel, composed of metal and glass, metal chief value, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed dutiable at 50 per cent under the same paragraph or at 50 or 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The merchandise, which consists of a glass or paste knob decorated with representations of clusters of flowers or fruits, with a metal setting having two prongs for the purpose of attaching it to a handbag clasp, was found not suitable for attachment to wearing apparel. It was held dutiable at 50 per cent under paragraph 356.

No. 39178.—Protest 789066 of Thomsen & Co., and protest 794200 of Morimura Bros. (New York).

BASKETS—EASTER NOVELTIES.—Wood baskets with Easter toys attached, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as baskets at 25 per cent under paragraph 175.

Opinions by SULLIVAN, G. A. On the authority of G. A. 7790 (T. D. 35796) the merchandise in question was held dutiable as baskets under paragraph 175, as claimed.

No. 39179.—Protests 761741, etc., of C. A. Auffmordt & Co. (New York).

DRESS GOODS, COTTON AND WOOL.—Dress goods composed of cotton, wool, and Angora goat hair, classified at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed dutiable at 35 per cent under paragraph 288. Dress goods classified at 35 per cent under paragraph 290 is claimed dutiable at 30 per cent under paragraph 266.

Opinion by BROWN, G. A. The dress goods in question found to be composed in chief value of wool, was held dutiable at 35 per cent under paragraph 288 or 290. That composed in chief value of cotton was held dutiable at 30 per cent under paragraph 266. Protests sustained in part.

BEFORE BOARD 2, JANUARY 26, 1916.

No. 39180.—Protest 777686 of Hallett & Chard (New York).

SUFFICIENCY OF PROTEST—UMBRELLA FABRICS.—A question arose in this case as to the validity of a protest signed "Hallett & Chard, by John Durrell Smith, attorney," which covers one entry made in the name of Frederick G. Hallett. Umbrella fabrics classified as silk chief value, at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed to be composed chiefly of cotton, dutiable at 30 per cent under paragraph 254.

Opinion by HOWELL, G. A. It appeared that Mr. Smith had authority to file protests for Hallett & Chard and also for Frederick G. Hallett, and the protest, which stated the entry number, the name of the vessel, the date of entry, the bond number, and the date of liquidation was held sufficient. On the authority of Abstract 38968 the umbrella fabrics which were found to be composed in

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chief value of cotton were held dutiable at 30 per cent under paragraph 254, as claimed.

No. 39181.—Protests 760209–50174, etc., of Marshall Field & Co. (Chicago), and protests 777026, etc., of H. A. Caesar & Co. et al. (New York).

BEADED TRIMMINGS.—Trimmings and ornaments made of beads or spangles and in part of netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinions by HOWELL, G. A. Certain trimmings and ornaments and items returned as appliquéd bead trimming, apparel, or embroidered bead trimmings or ornaments, appliquéd beaded wearing apparel, appliquéd or embroidered bead trimming on netting, and the items invoiced as beaded tunics, galloons, and flounces, found to be in chief value of beads or spangles, were held dutiable under paragraph 333, on the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls.,—; T. D. 35464).

BEFORE BOARD 1, JANUARY 28, 1916.

No. 39182.—Protest 743994 of R. F. Lang (New York).

CRYOLITE, ARTIFICIAL.—Artificial cryolite classified as a chemical compound at 25 per cent ad valorem under paragraph 3, tariff act of 1909, is claimed to be free of duty as cryolite or kryolith under paragraph 549.

Opinion by BROWN, G. A. The commodity in question was found to be used in the enameling and edging trade exactly as cryolite is used, and to be chemically the same. It was held free of duty under paragraph 549. G. A. 5575 (T. D. 24990) and G. A. 7840 (T. D. 36077).

BEFORE BOARD 2, JANUARY 28, 1916.

No. 39183.—Protests 756163, etc., of Fensterer & Ruhe et al., protests 758013, etc., of D. S. Hesse & Bro. et al., and protests 765646, etc., of J. G. Johnson & Co. (New York).

BEADED TRIMMINGS.—Trimmings and ornaments classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. Beaded trimmings, ornaments, tunics, etc., spangled gimps and flouncings, and other articles composed in chief value of beads or spangles were held dutiable under paragraph 333 on the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., —; T. D. 35464). Protests sustained in part.

No. 39184.—Protests 790330, etc., of Beck & Co. et al. (New York).

LACES—NETTINGS.—These protests are against the classification of laces, nettings, and other articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. Protests unsupported; overruled.

BEFORE BOARD 3, JANUARY 28, 1916.

No. 39185.—Protest 790629 of Baltimore & Ohio Railroad Co. (Baltimore).

NONIMPORTATION—CLERICAL ERROR.—In this case duty was collected upon 24 dozen plates, while it is alleged that only 24 plates were received by the importers. It is claimed that there was a nonimportation of 22 dozen plates and that a manifest clerical error was made in invoicing the amount as 24 dozen.

Opinion by HAY, G. A. It was found that the record does not overcome the presumption of correctness of the collector's action and that a manifest clerical

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error was not disclosed. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) cited.

No. 39186.—Protest 790132 of Wm. A. Brown & Co. (New York).

CAPACITY OF JARS.—Duty was assessed upon 80 cases of liquor in jars on the basis of 27 fluid ounces to a jar. It is claimed that the jars contained but 26 fluid ounces each.

Opinion by HAY, G. A. It was reported by the appraiser that jars of this character contain from 26 to 28 fluid ounces. One bottle was tested by the chemist and found to contain 26.9 fluid ounces. Protest overruled.

No. 39187.—Protest 785666 of Geo. Borgfeldt & Co. (New York).

DOLLS—"HAPPIFATS"—GLASS ARTICLES.—Articles of glass classified at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable as manufactures of glass under paragraph 95. Happifat dolls classified at 55 per cent under paragraph 80 are claimed dutiable as dolls at 35 per cent under paragraph 342.

Opinion by HAY, G. A. Protest overruled as to the glass articles classified under paragraph 84. Happifat dolls were held dutiable under paragraph 342, on the authority of Abstract 38185.

REHEARINGS GRANTED.

JANUARY 26, 1916.

No. 39188.—BEADED LUMBER.—Protest 767109 of Shevlin-Clarke Co. Abstract 38866.

JANUARY 27, 1916.

No. 39189.—ANIMALS FOR BREEDING PURPOSES.—Protest 786497 of F. L. Roberts & Co. Abstract 39040.

(T. D. 36118.)

Pineapple fruit and juice.

J. S. JOHNSON CO. *v.* UNITED STATES (No. 1524).

FRUIT, CRUSHED, WITH FRUIT JUICE ADDED.

Crushed pineapple, to which has been added the juice of other pineapples, is not dutiable under paragraph 274, tariff act of 1909, as "pineapples preserved in their own juice." It is a mixture of two articles, one of which is dutiable under paragraph 274 as "pineapples preserved in their own juice," and the other under paragraph 310 as "other fruit juices." There being no claim, however, of such a tariff status, and no showing as to how the relative quantities of the component parts may be ascertained, the board properly assessed it as "other fruit juices" under paragraph 310.

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37320.

[Affirmed.]

Walden & Webster (*Henry J. Webster* of counsel) for appellant.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise in this case was invoiced as "100 cases standard crushed pineapples preserved in their own juice," and was assessed

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for duty under paragraph 310 of the tariff act of 1909, which reads in part as follows:

310. Cherry juice and prune juice, or prune wine, and other fruit juices, and fruit sirup, not specially provided for in this section, containing no alcohol or not more than 18 per centum of alcohol, 70 cents per gallon. * * *

The importers contended before the Board of General Appraisers and contend here that the merchandise is properly dutiable under paragraph 274 of said act, either directly or by reason of the similitude clause, or the mixed-material clause, of paragraph 481.

Paragraph 274, so far as material, reads:

274. * * * Pineapples preserved in their own juice, not having sugar, spirits, or molasses added thereto, 25 per centum ad valorem.

The contention of the importers was overruled and the case appealed to this court.

The facts in the case are not much in dispute. The evidence discloses that the product as introduced consists of crushed pineapple and pineapple juice, the latter constituting in quantity about three-fourths of the entire article. It is imported in cans, and when poured from a hermetically sealed can into a glass jar and allowed to settle it shows that the lower portion of the importation contains crushed pineapple, but the upper portion, consisting of at least one-half, contains no pineapple whatever, but is to all appearances, and undoubtedly is in fact, the juice expressed from pineapples.

It also appears that pineapples, with juice expressed from the same, were the subject of importation before the present article was produced; that in such importations the crushed pineapple and the juice were commingled and the pineapple was found throughout the substance in its own juice. In the present case the evidence shows that an article of precisely the same composition is prepared from pineapples, and that thereafter an equal amount of juice expressed from other pineapples or parts thereof is added; that on importation the can is opened by the ultimate consumer and the juice is poured or drained off and used for making a sirup and the crushed pineapple itself is devoted to another distinct purpose. The question is, Is the imported article the article intended—pineapples in their own juice?

The contention of the importers is that without regard to the amount of juice included in the importation, so long as the pineapple is submerged in the juice of pineapple and remains the component material of chief value, it answers to the terms of this paragraph, and should be rated as pineapples preserved in their own juice.

We can not accept this interpretation of the statute. It would seem that the paragraph was framed with the idea that the juice of the pineapple performed some office in preserving the pineapple. The least that can be said is that it was designed to perform the office of holding the pineapple, either crushed or in its native form, and

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acting as a carrier therefor, preserving it in moisture. While it may be difficult to draw the line, it would seem clear that the juice which was in contemplation of the lawmakers and which might be used to preserve the pineapples imported under this paragraph should be such as was calculated to perform some office in relation thereto. But in this case, after the pineapples were crushed, it resulted in a mixture of pulp and juice, the juice being adapted to the purpose indicated. There was, for no apparent purpose in connection with the preservation of the pineapple, an addition of an amount equally as large in volume, perhaps larger, of clear juice expressed in another part of the mill and from skins of other selected pineapples. It appears, therefore, that to a product which fully answered the description of paragraph 274, containing all the ingredients essential or there provided for, another distinct article, dutiable under another paragraph of the tariff law, was added, making a mixture of two articles, one of which was dutiable under one paragraph and another under a distinct paragraph.

The board in its opinion suggested that, had there been a clear showing as to the relative quantity of the component parts of the mixture, duty might have been assessed under one paragraph as to a portion and under the other as to the remainder. But apparently the importers' counsel does not rely upon any such claim, and, as the finding of the board was that such division was impossible under the testimony, we need not inquire as to whether this would be a proper case for the application of such a rule. The importers insist, and the Government's counsel agrees, that the article as imported is to be treated as an entirety, and dutiable or not dutiable as such.

As the importers have failed to furnish any testimony upon which any separation of the goods for tariff purposes may be potentially made, we think the case falls within the reasoning of United States *v.* Ranlett (172 U. S., 133), and that the importation should pay the higher rate of duty under paragraph 310. The decision of the board to that effect is *affirmed.*

(T. D. 36119.)

Lamp shades in part of braid.

MORIMURA BROS. *v.* UNITED STATES (No. 1561).

1. BRAID—TAPE.

The language "braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine," in paragraph 358, tariff act of 1913, is not intended to narrow the lexicographic definition of the word "braid." It is comprehensive and sufficiently broad to cover the material which was used in the manufacture of the lamp shades at bar, and which appellants' witness stated may be called a braid or tape.

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2. MATERIAL NOT THE TEST OF CLASSIFICATION HERE.

These lamp shades, made in part of braids, are more specifically classified under paragraph 358, tariff act of 1913, as articles made wholly or in part of braids, "of whatever yarns, threads, or filaments composed," than under paragraph 318, as a manufacture in chief value of silk, notwithstanding that silk is their component material of chief value. By the words "of whatever yarns, threads, or filaments composed," in paragraph 358, Congress has excluded the element of component material in determining the dutiability of articles which answer the description of the paragraph.—United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., —; T. D. 35388) distinguished.

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37624.

[Affirmed.]

B. A. Levett for appellants.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise in this case consists of lamp shades, which were assessed for duty at the rate of 60 per cent under the provisions of paragraph 358 of the act of 1913, and are claimed to be dutiable at the rate of 45 per cent ad valorem as manufactures of silk under paragraph 318 of the same act. The board overruled the protest, and held the lamp shades to be in part of braid and dutiable under the provisions of paragraph 358 providing for "braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; * * * and articles made wholly or in part of any of the foregoing fabrics or articles; * * * of whatever yarns, threads, or filaments composed."

It is contended that the material which was held to be a braid by the board is not such in fact. There is no evidence of commercial designation. The importers' witness referred to the material as tape, and in answer to the question by the Government's attorney, "That so-called tape is really a braid, isn't it?" answered, "You can call it a braid or tape."

But it is urged that the sample shows on inspection that it is not a braid, and especially not the kind of braid referred to in paragraph 358. The definition of the word "braid," as given by the Standard Dictionary, is "a narrow, flat tape or woven strip for binding the edges of fabrics or for ornamenting them." In the case of Steinhardt & Bro. *v.* United States (121 Fed., 442), this definition was cited with apparent approval, but as the term "braid" was there in contest with bindings or tapes, provided for in another paragraph,

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the article there in question was held to fall within the terms of the latter paragraph.

In Murray's New English Dictionary one definition of braid is: "A woven fabric of silken, woolen, cotton, gold, or silver thread in the form of a band, used for trimming or binding articles of dress."

The material in question in this case answers to the call of these definitions, and we can not agree with counsel for the importers that the language of paragraph 358 is intended to narrow this meaning. On the contrary, the language, "braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine," is comprehensive and sufficiently broad to cover the braid in question.

It is urged by the importers, however, that even if the material of which the imported article is made in part be held to be a braid, yet that the more specific provision for the article in question is paragraph 318, which imposes a tariff of 45 per cent upon all manufactures of silk or of which silk is the component material of chief value not specially provided for. This contention is based upon the holding of this court in United States *v.* Snow's United States Sample Express Company (6 Ct. Cust. Appls., —; T. D. 35388), in which the case of Hartranft *v.* Meyer (135 U. S., 237), was followed, and the rule of the earlier case applied. In the express company case the contest was between "wearing apparel of every description made or manufactured wholly or in part" and "tuckings and articles made in whole or in part thereof," both provisions being appropriate to describe the goods in question. The conclusion was reached that the term "articles made in whole or in part" was a broader term than "wearing apparel made up or manufactured wholly or in part."

It will be noted that neither term depended for the specificness of its description upon the *material* of which it was composed. The present case is quite different. The only ground upon which the article in question could be classified under the silk paragraph is that it is a manufacture of silk, the *material* silk being the controlling term, and silk being of chief value. This might be considered a controlling provision but for the fact that by the terms of paragraph 358 the Congress has seen fit to exclude the element of component material as a factor in determining the dutiability of articles which answer the description of the paragraph. The language which works this result is that following upon the provision for braids and articles made in whole or in part of braids, viz, the provision "all of the foregoing of whatever yarns, threads, or filaments composed, 60 per centum ad valorem." It would have been difficult for Congress to choose language which would more clearly indicate that the material of which a competing article might be composed was not to be deemed controlling in determining the specificity of the respective

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paragraphs involved. As is well said in the Government's brief, this language is as forceful as it would have been had the various kinds of yarns, threads, or filaments been specially recited. Had it read "all the foregoing, whether composed of silk, or of cotton, or of hemp," it would have been clear beyond possibility of question, but to our minds no more definite than is the language which Congress saw fit to employ.

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 36120.)

Madras muslin—Jacquard figured upholstery goods.

UNITED STATES *v.* SNOW'S UNITED STATES SAMPLE EXPRESS CO. *et al.* (No. 1568).

1. CURTAINS AS UPHOLSTERY.

Madras muslin curtains and madras muslin curtain goods in the piece, both Jacquard figured, are, following Carter *v.* United States (6 Ct. Cust. Appls., —; T. D. 35473), within the lexicographic definition of upholstery, *i. e.*, the interior decorations of an apartment, and dutiable as "Jacquard figured upholstery goods," under paragraph 258, tariff act of 1913.

2. COMMERCIAL DESIGNATION.

The evidence in this case fails to show that, by definite, universal, and general commercial designation, the interior decorations of an apartment are divided into different classes, of which upholstery is one.

United States Court of Customs Appeals, January 22, 1916.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

Comstock & Washburn and *Miller & Bretzfelder* (*Albert H. Washburn, Geo. J. Puckhafer*, and *Cyrus Miller* of counsel) for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The goods here in question consist of madras muslin curtains and madras muslin curtain goods in the piece. They are cotton fabrics woven in various designs and colors, but all of the same general character, consisting of a light, open, or transparent background with Jacquard figured designs covering part of the surface. Duty was assessed on all the goods at the rate of 35 per cent ad valorem under the provision for "Jacquard figured upholstery goods," under paragraph 258 of the tariff act of 1913. The curtains are claimed by the importers to be dutiable at the rate of 30 per cent ad valorem under the provision in the same paragraph for "all other Jacquard figured manufactures of cotton," and the piece goods are claimed to be dutiable at the appropriate rates under the provision for "cotton cloth" in paragraphs 252 and 253.

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The only issue in the case is whether or not the goods are dutiable as upholstery goods. The Board of General Appraisers held that they were not so dutiable, and the Government brings this appeal.

This provision for upholstery goods was under consideration in Carter *v.* United States (6 Ct. Cust. Appls., —; T. D. 35475), in which case the decision of the board in the present case was cited as an authority by the importers, and it was discussed at some length in the opinion. It was held in that case that the term "Jacquard figured upholstery goods" was broad enough to include such goods as they are defined by lexicographers—*i. e.*, as the interior decorations of an apartment—and the omission in the act of 1913 of the words appearing in the act of 1909, limiting the Jacquard figured upholstery goods to such as weighed over 6 ounces per square yard was held to indicate a purpose to broaden the term "upholstery goods" to include goods of less substantial character and weight.

The result of the decision in the Carter case is to overrule the decision of the board in the present case as to the ground upon which the board rested its decision.

The statement appearing in the opinion of the board in the present case as to the effect of the testimony is as follows:

> A large number of witnesses testified as to the trade or commercial understanding of the term "upholstery goods," and the kind and character of the goods included within that designation. Some of the witnesses were of opinion that only fabrics suitable for upholstering furniture and making draperies and hangings were upholstery goods, while others stated that the term included everything carried in the upholstery department in department stores, excepting carpets, but including laces and lace curtains, poles, brass-headed tacks, damask table covers, furniture covering, mats, etc. Eight importers' witnesses and one Government witness specifically stated that the Madras in question was not included within the term "upholstery goods," and four Government witnesses stated that it was included within the term. The preponderance is fairly on the side of the importers, but it does not appear from the testimony of any of the witnesses that the commercial meaning differs from the common meaning of the term. The case therefore stands upon the common and usual signification of the words "upholstery goods."

The board then proceeds to a consideration of the dictionary definitions of upholstery and reaches the conclusion that the word is used in a broad and in a narrower sense, and that in the act of 1913 it was used in the narrower sense, and was restricted to a class of goods which would exclude madras curtains and madras in the piece designed for curtains.

Upon this point we adopted a different rule in the Carter case. In other words, we there held that these goods in question here fall within the common meaning of the term "upholstery goods," so that if the importer's case is to be sustained it must be upon grounds other than those which the board adopted in reaching its conclusion.

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Such grounds are urged. It is claimed that the board found the fact to be that these goods were not upholstery goods within the trade meaning of the term, and that the evidence in the case is sufficient to justify such a finding. It is a little difficult to know just what was intended by the board. They recite the testimony, and while they state that the preponderance is fairly on the side of the importers, they conclude by saying that it does not appear from the testimony of any of the witnesses that the commercial meaning differs from the common meaning of the term, and then proceed to decide the case upon the common meaning of the term.

We think that if the intention was to hold that the trade meaning of the term had been established by a preponderance of the testimony, this conclusion was not justified by the evidence adduced. The settled rule, which is sustained by the authorities cited in the Government's brief—Maddock *v.* Magone (152 U. S., 368), Sonn *v.* Magone (159 U. S., 417), United States *v.* Georgia Pulp & Paper Manufacturing Co. (3 Ct. Cust. Appls., 410, 414; T. D. 32998)—is that commercial designation, in order to be controlling, must be shown to be definite, uniform, and general in the trade. In the present case the testimony indicates that the term "upholstery goods" is not used in the trade in actual transactions of buying and selling. That is to say, a customer would not, in the ordinary course of trade, approach a seller with an inquiry for upholstery goods, but would inquire for tapestry, plush, etc., according to his needs. If there is such a classification, it is made by individual houses in the arrangement of their stock. Some houses maintain an upholstery department and a drapery department. In such houses the draperies for windows or doors would be found in the drapery department, and this would seem to have led some of the witnesses to conclude that draperies are not in any case upholstery, while others conclude that they may be classed as upholstery if of a quality and weight making them suitable for upholstering furniture. Other witnesses state that the use to which the material is put is the determining feature. If this be the test, the preponderance of the testimony shows that draperies for doors and windows are regarded as upholstery.

The importers' counsel state in their brief that perhaps the better distinction is found in the answer of the witness Reis, who testified:

> You see you have two hangings. People that have two hangings for a window have a drapery, and then they have a hanging also. The drapery is for the window decoration and the heavy hanging is for the interior decoration—for the decoration of the room.

And that of the witness Darling:

> You can not upholster a window.

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As to the testimony of Reis, it may be said that it is not persuasive; that a line can be drawn between the outer and the inner drapery of a window and one be called interior decoration and the other something else. It needs no testimony to establish that both the inner and the outer draperies are intended for decorations. As to the statement of the witness Darling that you can not upholster a window, it is obvious that he uses the term "upholstery" in the narrow sense to provide "with a cover." It is equally clear that the difficulty he encounters in upholstering a window would be present whether the attempt be made to drape it with a heavier or a lighter material. To a better understanding of the testimony of this witness, whose fairness we do not question, we quote:

Q. In your conversations with people buying from you there, was there anything to indicate whether draperies were a form of upholstery goods or a separate thing?—A. Oh, yes.

Q. Was there that indicated that draperies were not merely one form of upholstery goods; namely, a light form of upholstery goods for windows?—A. You can not upholster a window.

* * * * * * *

Q. Here is what I mean. The fact that a thing is called a drapery—is known under the name "drapery"—does not necessarily mean that draperies may not be one of the forms of the more large and more general class of upholstery goods. If that is not so, tell me what there was in your conversations or transactions with these people that showed it was not so.—A. These goods could be by some persons included in the general term "upholstery goods," or goods of an upholstery department. On the other hand, upholstery goods could not, unless by some one hopelessly ignorant, be included in the term "drapery goods." That is as clear an answer as I can give you. I am trying to tell it clearly. Brass tacks are in the upholstery department, but they are not drapery goods, nor are they coverings.

This testimony would seem fairly to import that the term "upholstery goods," in a general sense, was intended to include draperies, but that the two terms are not synonymous. This is made more manifest by another quotation from his testimony:

Q. Speaking now of the wholesale people only, not the retailers, is the distinction that you have drawn between upholstery goods and madras muslins one that obtains among all the large dealers in that class of merchandise with which you come in contact?—A. Not all.

Q. What distinction, if any, do some of them make?—A. The distinction is goods for upholstery use and goods for drapery use. That is the distinction in the trade.

Q. That is the distinction in the trade?—A. Goods for upholstering furniture and goods for draping windows.

Q. And which are the exhibits in this case?—A. Drapery goods for windows, the same as laces or nets.

This shows that this witness had in mind a much narrower meaning for the term "upholstery goods" than several of the importers' witnesses, who recognized the term as including draperies; and it also

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shows that such use of the term is not restricted by all dealers, and furthermore that "draperies" include the goods in question. In this latter proposition he is supported by the witnesses for the Government.

True, some of the importers' witnesses draw a distinction between light-weight draperies, such as are here in question, and heavier draperies. This attempted distinction, however, we think results from a confusion in the minds of the witnesses and an attempt to get back to the idea that the term "upholstery" should be restricted to such heavy goods as are *suitable for coverings* and adopting in their own minds a definition which would exclude draperies *as such*, but include draperies when made from goods known as upholstery goods because of their adaptability to use as coverings of furniture. This is illustrated by the testimony of the witness Bryan:

Q. What was there that indicated that that distinction had anything to do with the question whether one was upholstery goods and the other was not?—A. Difference in the weight of the fabric would have something to do with it.

Q. I am not speaking about the weight of the fabric. I am speaking about the language used, written or spoken, that indicated whether one thing was upholstery goods or not and another thing was upholstery goods or not.—A. I have always understood the term related to heavier fabrics.

Q. Where did you get that understanding?—A. Just from my general business experience.

Q. Does that include the use of the term "upholstery goods" by anybody?—A. The term is generally understood in the trade.

Q. That distinction was not carried out in the bills or advertising or in correspondence or in letterheads or in anything of that sort?—A. Not especially.

Q. Just in the back of your mind somewhere?—A. Yes.

Q. Not in conversation with your customers?—A. Not specially.

* * * * * * *

Q. I will ask you again, have you never had a buyer come in and say, "Let me see a line of samples of your upholstery goods"?—A. Not that I recall.

And of the witness Roche:

Q. Now, what class of goods did it (upholstery goods) include?—A. Upholstery fabrics, fabrics used to upholster furniture, and thick material that might be used for that purpose.

Q. Name some of the kinds.—A. Portieres, for wall decorations, plush; any pile fabric or any tapestry fabric that would be heavy enough to be used in upholstering furniture.

* * * * * * *

Q. Was there a distinction made in the trade between upholstery goods and madras goods to make curtains?—A. Yes.

Q. Were dealers in one dealers in the other?—A. Dealers who handled upholstery goods, unless furniture manufacturers, usually handled lace curtains or window decorations also.

Q. In invoicing or in buying or selling or in advertising was that distinction maintained between upholstery goods and madras and madras curtains?—A. Yes.

Q. During all your experience?—A. Yes.

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Q. The words "upholstery goods" as used in the trade was used in what way—how would a man use it?—A. As a covering for furniture in most instances.

Q. In what way would the term be used in trade?—A. To describe the fabrics.

Q. Used in advertising?—A. Yes; to describe those fabrics I have described.

The basis of the statement of the witness Carl Ries, quoted in the brief of importers' counsel, is best seen by a fuller quotation from his testimony:

Q. What occasion would there be for the use of the word "upholstery" at all?—A. Upholstery can be used for very many things. It comes in contact with very many lines.

Q. I am not asking about the use of upholstery. I am asking about the use of the word upholstery in buying and selling transactions.—A. In selling the goods we use the word upholstery in describing the use it can be put to in explaining to the buyer.

Q. That means, I suppose, the goods can be put to what you call upholstery uses, such as covering furniture, making of door curtains, portieres, window curtains, etc., hangings?—A. Lots of uses.

Q. Does anything that can be used for those purposes come within the term "upholstery goods"?—A. Some of them.

Q. Some of them?—A. Some of them.

Q. Would all of them? Would not everything that can be used for upholstery purposes be entitled to be called upholstery, in your understanding?—A. Well, upholstery, if you come down to a distinct definition of it, it may mean one thing and it may mean another. It depends on the use entirely.

Q. Within your trade classification of upholstery goods whether it was upholstery goods or not depended upon the use, did it?—A. Entirely.

Q. And that use, among other things, was as hangings or draperies for windows?—A. No.

Q. Wasn't it?—A. No.

Q. What is wrong with it?—A. Because upholstery—if this is the class of goods which you refer to—it is not upholstery.

Q. I am not referring to any class of goods; I am referring to the use of something as window curtains or window hangings.—A. They would not be upholstery, in my opinion.

Q. Is there nothing used for window hangings that is upholstery goods?—A. Not in my opinion of the definition of the word.

Q. If you take a heavy tapestry and hang it at the window, it would not be upholstery?—A. Yes; but you don't.

Q. You have never seen it done?—A. Not as a hanging for the window itself. You see, you have two hangings. People that have two hangings for a window have a drapery and, then, they have a hanging also. The drapery is for the window decoration and the heavy hanging is for the interior decoration—for the decoration of the room.

Q. Which is true, then, that the trade classifies things as upholstery because they have certain uses, or that the trade applies the word "upholstery" to certain specific goods, regardless of use?—A. To my way of looking at it, they have it for a certain use.

Q. Are there not some goods that are called upholsteries regardless of what the buyer is going to do with them?—A. That I can not say.

Q. You are sure that the word "upholstery" is actually used in your orders and in your bills, that particular word, as defining something?—A. Sometimes; yes. It has a meaning in the trade.

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This testimony is not persuasive to show the distinction claimed by counsel for the importers.

Without extending this opinion inexcusably, we are convinced, from a careful examination of the record, that the board was quite right in its conclusion that there was a failure to show by the testimony of the importers that there was a commercial meaning differing from the common meaning of the term "upholstery goods," and that they were right in saying that the case depended for its determination upon the common and usual signification of the term "upholstery goods." As this court has already determined the meaning attaching to this term as including those within the present importation, it follows that the decision of the board which reached the opposite conclusion upon the question of law should be *reversed.*

(T. D. 36121.)

Hansa yellow—Coal-tar color—Lake.

FARBWERKE-HOECHST CO. *v.* UNITED STATES (No. 1534).

1. HANSA YELLOW, HOW DUTIABLE.

Hansa yellow, an insoluble dry coloring matter derived from coal tar, is dutiable under paragraph 20, tariff act of 1913, "coal-tar dyes or colors, not specially provided for in this section." This paragraph does not exclude from its operation coal-tar pigments or coal-tar lakes (if any such there be), or insoluble coloring matters derived from coal tar.

2. ALL PARTS OF STATUTE TO BE GIVEN FIELD FOR OPERATION.

To hold all insoluble coloring matters, lakes, or pigments which may be derived from coal tar unclassifiable under paragraph 20, tariff act of 1913, would practically limit the scope of the paragraph to coal-tar dyes, leaving nothing dutiable as coal-tar colors.

3. PIGMENTS—LAKES.

A pigment is a special kind of coloring matter, and a lake is a special kind of pigment. "Coal-tar colors," then, enumerates coal-tar pigments and coal-tar lakes (if any such there be), and this enumeration in paragraph 20, tariff act of 1913, is a narrower one than that of pigments and lakes generally in paragraph 63.

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7665 (T. D. 35065).

[Affirmed.]

Walden & Webster (*Henry J. Webster* of counsel) for appellant.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Merchandise invoiced as Hansa yellow, 5–G, in lumps, imported in 1909, was returned by the appraiser as a coal-tar color, provided

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for in paragraph 15 of the tariff act of 1909, but as the importation was not withdrawn from warehouse until after October 3, 1913, it was assessed for duty by the collector of customs at 30 per cent ad valorem, under the provisions of paragraph 20 of the tariff act of 1913, which paragraph reads as follows:

20. Coal-tar dyes or colors, not specially provided for in this section, 30 per centum ad valorem.

The importers protested that Hansa yellow was dutiable at 15 per cent ad valorem as a product or preparation of coal tar under the provisions of paragraph 21, or at the same rate as a pigment under paragraph 63, or at 20 per cent ad valorem as a color lake under the latter paragraph, or at one or the other of said rates by similitude under the provisions of paragraph 386.

Paragraph 21 and that part of paragraph 63 of the act of 1913, upon which the importer relies, read as follows:

21. All other products or preparations of coal tar, not colors or dyes, not specially provided for in this section, 15 per centum ad valorem.

63. Enamel paints and all paints, colors, pigments, * * * whether crude, dry, mixed, or ground with water or oil or with solutions other than oil, not specially provided for in this section, 15 per centum ad valorem; * * * all color lakes, whether dry or in pulp, not specially provided for in this section, 20 per centum ad valorem.

The Board of General Appraisers overruled the protests and the importers appealed.

Hansa yellow, as appears from the testimony in the case, is an insoluble dry coloring matter derived from coal tar and is manufactured into paints or into printer's or lithographic inks by grinding it with varnish, oil, or other vehicle, fitting it for application to surfaces.

The appellant contends, first, that the merchandise is a color lake and that it is therefore dutiable at 20 per cent ad valorem under the last clause of paragraph 63, which provides for "all color lakes, * * * not specially provided for"; second, that if the merchandise can not be regarded as a lake it must be classified as a pigment, not specially provided for, and dutiable at 15 per cent ad valorem under the first clause of paragraph 63.

Both of these contentions are predicated upon the assumption that it was the intention of Congress to exclude from the operation of paragraph 20 those coal-tar colors which are either pigments or lakes, and to make coal-tar pigments and coal-tar lakes dutiable under the provisions of paragraph 63. To that interpretation we must decline to give our approval. According to the standard dictionaries and the authorities apparently relied upon by the Government and the importer, a pigment is an insoluble coloring matter of mineral, animal, or vegetable origin, which, when mixed with oil,

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varnish, or other appropriate liquid vehicle, forms a paint suitable for the coloring of surfaces. (See "Pigment," Century, Standard, Webster's International, and Oxford dictionaries.)

A pigment is, therefore, a special kind of coloring matter and a lake is a particular species of pigment. Coal-tar pigments and coal-tar lakes, if any such there be, are, consequently, coal-tar colors, and from that it ensues that such pigments and lakes are enumerated and provided for in paragraph 20. See Merck *v.* United States (6 Ct. Cust. Appls., —; T. D. 35315). Appellant urges in effect, however, that as pigments and lakes are a class, kind, or species of colors, preference must be given to their enumeration as such. That claim would probably be well founded if the general designation "colors" were brought into competition with the specific designation "pigments" or "lakes." But that is not this case. Here the enumeration "coal-tar colors," which must necessarily be construed as an enumeration of coal-tar pigments and coal-tar lakes, is contrasted with the provision for pigments and lakes in general, and must, we think, be accepted as the narrower designation. If we hold that coal-tar pigments and coal-tar lakes are more specifically provided for by the provision for pigments and lakes in paragraph 63, then, by the same token, we must hold that coal-tar stains are more specifically provided for by the designation "stains" in the same paragraph. But as any such conclusion as that would result in practically limiting the scope of paragraph 20 to coal-tar dyes and in reducing the provision for coal-tar colors to the efficiency of mere surplusage, it is evident that the position taken by the appellants ought not to be sustained, especially when it is clear that the competing provisions are open to a construction which will give effect to the language of both.

It is argued, however, that paragraph 20 was designed to cover soluble coal-tar colors only, and that it was not intended to include insoluble colors, which belong to the paint and not to the dye class of colors. In support of that interpretation it is asserted that the color provisions are so grouped in the law as to evidence a design to keep dyes and colors of the dye class separated from paints and colors of the paint class. We think that if any conclusion is to be drawn from the grouping of colors it rather makes for the theory that Congress intended to provide for coal-tar colors in that part of the act which it saw fit to assign to coal-tar products and not in the later provisions, which seem to have been set apart for those colors derived largely, if not exclusively, from other sources than coal tar. Paragraphs 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, and 62 provide for colors and pigments which are decidedly not of coal-tar origin, and those provisions are immediately followed by the provision which the importers claim should have been applied to the importation by the collector.

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Separated from these paragraphs by various provisions for goods which are not coloring matters at all we find coal-tar dyes or colors, coal-tar distillates, and coal-tar products or preparations provided for in paragraphs 20, 21, 22, and 23. Certainly, from no such arrangement of the tariff act as that can it be logically deduced that insoluble coal-tar colors were not intended to be provided for in paragraph 20. Moreover, there is nothing in the statute or in the decisions to which our attention has been called which would warrant us in excluding from the designation "coal-tar colors" such coal-tar colors as are insoluble.

It is true, as claimed by the importers, that there is no provision in any of the tariff acts prior to the act of 1913 for color lakes as such, but from that it can scarcely be inferred that "color lakes" has a wider signification than "lakes," and much less that the modification of the term "lakes" by the adjective "color" indicated a legislative intent to exclude coal-tar lakes, if any such there be, from the provision for coal-tar colors. But however that may be, there is, in our opinion, one conclusive answer to this line of argument, and that is, that the evidence set out in the record does not show that the merchandise in controversy is a lake. According to the Government, a lake is an organic coloring matter combined with a metallic base, and to constitute a lake metallic or mineral matter must always be present. According to the importers a lake may be either an organic coloring principle combined with a metal or mineral base or a basic dye combined with an organic acid. As a corollary to that proposition, it is further claimed that the term "lakes" has come to mean all organic artificial insoluble pigments produced by any method and used for paint. No evidence, however, was produced showing that either a metallic base or an organic acid was a factor in the production of Hansa yellow. Whether, therefore, a lake be considered as an insoluble organic coloring matter combined with a metallic base or a basic dye combined with an organic acid, it is evident that the make-up of the importation, in so far as shown by the record, would not justify us in holding that Hansa yellow is a lake either under the definition contended for by the Government or under that claimed by the importers.

Some of the witnesses for the importers did testify that while the term "lakes" was originally confined to insoluble coloring matters produced by combining a soluble organic color with a metallic base, it had come to mean in the last five or six years any organic insoluble color. It was not pretended, however, by any of these witnesses that that extension of the original meaning of "lake" was brought about by trade usage, and we find nothing in any of the recognized authorities cited which would lead us to conclude that popular usage has at any time sanctioned such a use of the word. It is entirely probable

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that chemists and manufacturers of colors have given the designation "lakes" to pigments which do not meet the popular understanding of the term, but no such usage as that is sufficient to alter its commonly accepted signification.

When Congress came to pass paragraph 20 it had, in our opinion, in mind all the coal-tar dyes and coal-tar colors, and intended that every coal-tar dye and color should be covered just as effectively as if it had been mentioned by name, save and except such coal-tar dyes and colors as were elsewhere provided for by name or were otherwise more specifically provided for as such. As we construe the designation "coal-tar colors" in paragraph 20 to be the equivalent of the enumeration *eo nomine* of all classes and kinds of coal-tar colors not otherwise provided for, we must decide that whether the importation be regarded as a coal-tar lake or a coal-tar pigment it is covered more specifically by the enumeration of paragraph 20 than by the designations "pigments" and "lakes" of paragraph 63, which are broad enough to cover not only coal-tar pigments and lakes but all pigments and lakes, whatever their origin.

Inasmuch as the designation "coal-tar colors" covers coal-tar pigments and coal-tar lakes, if any such there be, the goods are enumerated, and consequently they are not subject to classification by similitude.

Paragraph 21 can not be applied to the merchandise, for the reason that that paragraph expressly excludes from its operation colors and dyes.

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 36122.)

Marine pitch—Panama Canal act.

UNITED STATES *v.* JOHN A. CONKEY & Co. (No. 1545).

1. UNREASONABE TREASURY REGULATION INVALID.

The Treasury Department's regulation of November 25, 1912, issued under section 5, Panama Canal act, prescribing, as a prerequisite for admission free under said section, an exclusive method of proof that the importations conform to the description in the section, is unreasonable in that it requires the importer to produce the affidavit of persons over whom he has no control, and is, therefore, invalid.

2. EVIDENCE.

Other evidence was properly admitted.

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7668 (T. D. 34609).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

Searle & Waterhouse (*Harold P. Waterhouse* of counsel) for appellees.

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Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

The merchandise involved in this case is marine-glue pitch, which was classified by the collector of customs at Boston as a nonenumerated manufactured article, dutiable at 20 per cent ad valorem under the provisions of paragraph 480 of the tariff act of 1909, which, in so far as pertinent to the issue, reads as follows:

480. That there shall be levied, collected, and paid on the importation of * * * all articles manufactured in whole or in part, not provided for in this section, a duty of 20 per centum ad valorem.

The importers protested that the goods were entitled to free entry under that part of section 5 of the Panama Canal act, passed August 24, 1912, which reads as follows:

That all materials of foreign production which may be necessary for the construction or repair of vessels built in the United States, and all such materials necessary for the building or repair of their machinery and all articles necessary for their outfit or equipment, may be imported into the United States free of duty under such regulations as the Secretary of the Treasury may prescribe.

The Board of General Appraisers sustained the protest and the Government appealed.

We take it that it is established by the record and not disputed—

(1) That L. W. Ferdinand & Co., on August 6, 1912, submitted to the Navy Department an offer to furnish marine-glue pitch for use at Government navy yards, which offer was accepted and was followed by a formal contract executed in accordance with its proposals on the 1st day of October, 1912.

(2) That on November 25, 1912, the Treasury Department issued regulations under section 5 of the Panama Canal act, upon compliance with which collectors of customs were instructed to admit free of duty materials imported on and after August 24, 1912, and provided for in said section.

(3) That to entitle the materials to free entry, the importers were required by such regulations to furnish to the collector of customs the following evidence of the proper disposition of the merchandise: First, an affidavit of the master builder, general storekeeper, or superintendent, setting forth that the materials had been wholly used in the construction or repair of the hull or in the building or repair of the machinery of a designated vessel in the course of construction or repair at the time of the making of the affidavit, and that no part of the materials had been used in any manner other than as indicated in the affidavit; second, the affidavit of the importers, stating that they had carefully investigated the statements made in the affidavit of the master builder, general storekeeper, superintendent, or

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other person under whose supervision the merchandise was put into the vessel, and that he believed such statements to be true, and, further, that no part of the said materials had been used in any manner other than as indicated.

(4) That subsequent to the making of the contract above mentioned, and on January 14, 1913, 17 drums of marine-glue pitch, weighing 5,100 pounds net, were imported at the port of Boston and were entered for admission free of duty on January 15, 1913.

(5) That on an order from the Navy Department and in pursuance of the company's contract with the Government there were delivered on January 17, 1913, to the hull division 17 drums of marine-glue pitch, weighing 5,100 pounds.

(6) That the importers requested the proper naval authorities to keep an account of the disposition of the merchandise and by correspondence and personal interviews repeatedly endeavored to secure from the Navy Department the affidavit prescribed by the Treasury regulations touching the use to which the material was put.

(7) That the Navy Department positively declined to accede to the request so made, and definitely notified L. W. Ferdinand & Co. by letter that the Navy storekeepers would not be permitted to keep an account of the glue delivered or to certify to the use to which it was devoted.

(8) That the Navy Department, in its letter to the company, took the position that the Government and not the importers was entitled to the benefit of free entry of the goods, and that unless the department found it to its advantage to enter in separate accounts the stock used on American-built and on foreign-built Navy vessels no such accounts would be kept, inasmuch as the terms of the bid and of the contract entered into with L. W. Ferdinand & Co. imposed no such obligation on the Navy Department.

On this state of facts, and in support of the appeal, the Government argues, first, that as a condition precedent for the free entry of the goods the importers were bound to submit to the collector, as evidence of the disposition of the goods imported, the affidavits prescribed by the Treasury regulations; second, that the board, in the absence of such affidavits, erred in admitting evidence tending to prove the use to which the importation was put by the Navy Department.

It is well settled by the decisions of the courts, as counsel contends, that under a tariff provision admitting goods to free entry or at a reduced rate of duty, subject to Treasury regulations, compliance with such regulations is a condition precedent to the vesting of the right accorded by the statute. It is equally well settled, however, that if such regulations are to be given effect they must be

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reasonable and not impossible of compliance. United States *v.* Dominici (78 Fed., 334, l. c. 337–338); United States *v.* Brewer (92 Fed., 343, l. c. 344). They must be regulative and not prohibitive. United States *v.* Morris (3 Ct. Cust. Appls., 146, l. c. 149; T. D. 32386).

Before the first proposition of the Government can be sustained, therefore, it must be found that the regulation of the Treasury Department relied upon is reasonable; and to that conclusion we can not persuade ourselves, in view of the fact that under the regulation the affidavit of the master builder, general storekeeper, or superintendent becomes exclusive evidence of the use to which the goods were actually put, and the production of the prescribed evidence is left wholly dependent, not on the will of the importers but on that of a stranger to the importation, who is entirely free to do as he pleases in the matter. In this case the person designated by the regulation to make the affidavit therein provided for refused to furnish it and based his refusal not on the ground that the goods were not used as claimed, but on orders of the Navy Department which forbade compliance with the request of the importers and to which he could not deny obedience without peril to himself. And so we find in the present issue that one department of the Government prohibited the giving of information which another department exacted by regulation as a condition precedent for the free entry of goods which it was the intention of Congress to admit free if used in the construction or repair of American-built vessels. A regulation which actually brings about such an anomaly as that, which leaves the importers' right to the mercy and good will of persons not identified with the importation or subject to importers' control, which admittedly obliges the keeping of no record showing the purpose to which the merchandise was devoted, and which of necessity must result in an unequal application of the law and in a discriminatory classification of goods of the same identical kind, imported in the same identical way, and actually used for the same identical purpose, is, in our opinion, unreasonable and therefore invalid.

The Government urges that the importers, being aware of the regulation at the time the contract was made, might have stipulated or endeavored to stipulate with the Government for the keeping of the proper accounts and the production of the prescribed affidavit, and that failing to secure such stipulation they might have protected themselves by keeping such accounts as would conform to the regulations. We do not think that that proposition can be successfully maintained—first, because the information necessary for the keeping of the accounts was not available to the importers, and, second, be-

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cause if the regulation was valid the collector could accept under the decisions no evidence of the disposition of the goods other than the designated affidavit, whether such affidavit was provided for by contract or not. Moreover, even if the Government had contracted to supply the affidavit, that stipulation would impose no legal obligation on the general storekeeper, and if such an obligation were imposed and he failed to meet it the importers would be left in no better case than they are now. True, if the affidavit contracted for were refused, the importers might have recourse to such proceedings on the contract as the law permitted to recover damages for a breach thereof, but those proceedings, even if successful, would not secure free entry of the goods as contemplated by the statute, and this rather emphasizes the fact that the evidence demanded by the regulation was so far beyond the power of the importers to produce that not even litigation could secure it.

The contention is made that section 5 was designed to encourage American shipbuilding, and that therefore it was intended that the advantage of free entry should accrue to the ultimate consumer and not to the importers. That the purpose of Congress was to reduce the cost of ship construction and repair and thus advantage shipowners as an economic result of the section may be admitted, but it certainly can not be admitted that the section itself, either in terms or by any reasonable construction, imposes on importers any obligation to give the consumer the benefit of the free entry accorded to the goods imported by them. It may be that the Navy Department would have secured marine-glue pitch at a lower price had bids been submitted *after* section 5 was passed, but from that it can no more be argued that the Navy Department was entitled to the benefit of free entry than that the Navy Department would have been obligated to pay a higher price had the duty on the materials been increased after the bids were accepted.

The statute under consideration in terms limits free entry to those materials necessary for the construction or repair of vessels built in the United States. The goods under consideration were not classified by the collector as materials of that kind, and consequently it was incumbent on the importers to establish by competent proof that the goods in question met the statutory description; and from that obligation they were not relieved by the fact that the invalidity of a Treasury regulation made it unnecessary for them to provide the special and particular kind of evidence therein prescribed. From that it follows that the testimony of H. T. Hagner, assistant general storekeeper at the Charleston Navy Yard, introduced by importers for the purpose of showing the actual use of the goods, was properly admitted. By that testimony it was proven that all material is issued

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by the general storekeeper on requisitions for some specific job, and that the 17 drums, containing 5,100 pounds of marine-glue pitch, received by the Navy Department on January 13, 1913, from L. W. Ferdinand & Co., were issued on such requisitions, and that to the best knowledge of the assistant general storekeeper the marine-glue pitch so issued was used in the construction and repair of American-built vessels. In the light of that testimony, which is uncontradicted, and in view of the fact that we regard as invalid the Treasury regulation under discussion, we must hold that the 17 drums of marine-glue pitch involved in this appeal were entitled to free entry.

The decision of the Board of General Appraisers is therefore *affirmed*.

(T. D. 36123.)

Marine pitch—Panama Canal act.

UNITED STATES *v.* JOHN A. CONKEY & CO. (No. 1547).

1. UNREASONABLE TREASURY REGULATION INVALID.

Following United States *v.* John A. Conkey & Co. (6 Ct. Cust. Appls., —; T. D. 36122), just decided, the Treasury Department's regulation of November 25, 1912, issued under section 5, Panama Canal act, prescribing, as a prerequisite for admission free under said section, an exclusive method of proof that the importations conform to the description in the section is unreasonable in that it requires the importer to produce the affidavit of persons over whom he has no control, and is, therefore, invalid.

2. BURDEN OF PROOF.

The fact that this regulation is invalid does not relieve the importer of the burden of proving that the importations conform to the description in the section.

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37280.

[Reversed.]

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

Searle & Waterhouse (*Harold P. Waterhouse* of counsel) for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

In this case the importing company claims that marine-glue pitch imported by it was used by the Navy in the construction and repair of American-built vessels, and that it is therefore entitled to free entry under section 5 of the Panama Canal act, passed August 24, 1912. The Government contends, first, that the Treasury regulation promulgated under section 5 of said act and requiring the production to the collector of an affidavit of the master builder, general store-

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keeper, or superintendent showing the use to which the goods were put was valid, and that inasmuch as that regulation was not complied with the goods must, on that ground alone, be denied free entry; second, that there was no evidence of any kind introduced by the importers showing or tending to show that the merchandise which was made the subject of protest was necessary for or was used in the construction or repair of American-built vessels, and that consequently it was error for the board to find that the merchandise was so used.

We decided in suit No. 1545 that the Treasury regulation relied upon by the Government was unreasonable inasmuch as it made the affidavit of the master builder, geneal storekeeper, or superintendent, over whom the importers had no control, exclusive evidence of the fact that the importation was actually used in the construction or repair of American-built vessels. We must therefore hold in this case that the point made in the first contention is not well taken.

The unreasonableness of the regulation and the fact that the importers could not comply with it did not, however, relieve them from the obligation of overcoming the presumption of correctness attaching to the collector's decision, and consequently at the hearing before the board they were bound to establish by a preponderance of credible evidence that the merchandise claimed by them to be free of duty was necessary for the construction or repair of American-built vessels. That brings us to a review of the evidence in the case and to a consideration of the Government's claim that the importers failed to show that the merchandise in question was used for the purposes prescribed by the statute.

The record discloses that on the 22d day of November, 1912, the Navy Department directed L. W. Ferdinand & Co. to deliver at the Portsmouth Navy Yard, for the use of the United States ship *Washington*, 5,040 pounds of the marine-glue pitch contracted for with the company. The marine-glue pitch so ordered by the Navy Department was delivered at the Portsmouth Navy Yard, and in due course the contract price was paid therefor. On June 25, 1913, the Navy Department required L. W. Ferdinand & Co. to furnish an additional quantity of the merchandise contracted for, and in compliance with that order 12 casks of marine-glue pitch, containing 336 pounds each, were delivered by the company at the Charleston Navy Yard. The certificate of the general storekeeper of the Charleston Navy Yard, which was admitted in evidence subject to the objection that it was not in conformity with the Treasury regulations, shows that this delivery was made on July 29, 1913, and that out of it 292 pounds were issued to the United States ships *Rhode Island*, *Vestal*, and *Celtic*.

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None of the testimony or evidence introduced in suit No. 1545 was introduced at the hearing of this case, and so far as we can find there is nothing in the record which would justify us in finding that any of the material delivered to the Navy Department and which is the subject of controversy was either necessary for or actually used in the construction or repair of American-built vessels. Under the acts of Congress which prescribe the rule for the naming of vessels in the United States Navy it is possible that we might take judicial notice of the fact that the *Washington* and the *Rhode Island* are battleships of the American Navy, and therefore American vessels in the sense that they are American owned. That rule, however, affords no clue to the status of the *Vestal* and *Celtic*, and whether they are American owned or not does not appear. But even if we could assume that all four vessels were American owned, we would still be in the dark as to whether they were American built, unless we were prepared to conclude that they were American built because they were American owned and constituted a part of the American Naval Establishment. Any such conclusion as that would, of course, be unwarranted in the absence of a law prescribing that naval vessels must be American built, and in the light of the well-known fact that war vessels and naval transports built abroad and acquired by purchase or capture became a part of the American Navy during the Spanish-American War and Philippine insurrection.

As the record does not disclose that the merchandise under discussion was necessary for the construction or repair of American-built vessels or that it was employed for that purpose, the importation does not fall within the terms of section 5 of the Panama Canal act, and it was therefore not entitled to free entry.

The decision of the Board of General Appraisers is *reversed*.

(T. D. 36124.)

Beet-knife sharpeners—Files—Agricultural implements.

UNITED STATES *v.* AMERICAN EXPRESS CO. (No. 1552).

1. "FRAISES"—SUGAR-MANUFACTURING MACHINERY FREE.

"Fraises"—the abrading parts of machines which sharpen the knives of beet-cutting machines—being shown to be indispensable to the operation of the sharpening machines and used exclusively for that purpose, the cutting machines being shown to be indispensable to the operation of a beet-sugar factory, are entitled to free entry under paragraph 391, tariff act of 1913, as "machinery for use in the manufacture of sugar * * * and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts."

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2. CONSTRUCTION.

The phrase "whether in whole or in parts" relates not only to "all other agricultural implements" but also to the articles, appliances, or machines antecedently enumerated.

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7687 (T. D. 35141).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

McLaughlin, Russell, Coe & Sprague and *Sharretts, Coe & Hillis* (*Thaddeus S. Sharretts* and *Edward P. Sharretts* on the brief) for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Goods known as "fraises," imported at the port of New York, were classified by the collector of customs as manufactures of metal not specially provided for and assessed for duty at 20 per cent ad valorem under paragraph 167 of the tariff act of 1913, which paragraph, in so far as pertinent to the case, reads as follows:

167. Articles or wares not specially provided for in this section; * * * if composed wholly or in chief value of iron, steel, * * * or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

The importers protested that the goods were parts of beet-sugar machines and therefore free of duty under paragraph 391 of the tariff act of October 3, 1913, which paragraph reads as follows:

(Free list.) 391. Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horse-rakes, cultivators, thrashing machines, cotton gins, machinery for use in the manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts.

The Board of General Appraisers sustained the protest and the Government appealed.

As appears from the sample in evidence and the record in the case, the fraises have a flat ring-shaped steel filing surface, beveled on the outer edge and fitted to a metal disk with a hole in the center by means of which the implement is adjusted to a shaft for service. The fraises are used for sharpening so-called beet knives, which have a fluted blade and a series of connected V-shaped cutting edges. The edges of the flutings, which also serve the purpose of cutting edges, are parallel to one another and perpendicular to the V-shaped cutting edges. The knives are employed to cut beets to a form and size which will facilitate the extraction of the juices from which beet sugar is made. Before cutting, the beets are washed, but it appears that some grit, dirt, and stone still adhere

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to them when they are brought under the knives, in consequence of which all the cutting edges of the knives are very quickly dulled and not infrequently broken. So great, indeed, is the wear on the knives that from 1,500 to 2,000 of them must be removed daily from the cutting machine and sharpened in order to render them fit for further use. The record discloses that for the sharpening of the knives every beet-sugar plant is equipped with a fraising machine, and each fraising machine is supplied with an abrading appliance, called a fraise, which does the sharpening and which is an essential part of the sharpening mechanism. According to the evidence, fraising machines have no known use, except that of sharpening sugar-beet knives, and for a period of at least 23 years they have been regarded as a necessary part of the mechanical equipment of beet-sugar factories.

On this state of facts the Government contends, first, that the goods are files, and that as files are provided for *eo nomine* in paragraph 131 of the tariff act, preference must be given to that designation rather than to their enumeration in paragraph 391 as parts of machinery for use in the manufacture of sugar; second, that as the knife-sharpening machines never come in contact with the beets from which the sugar is made and have no direct intervention in the making of sugar, such machines can not be classified as "machinery for use in the manufacture of sugar"; third, that parts of sugar-manufacturing machinery are not provided for in paragraph 391, and that therefore fraises, which are nothing more than parts of the fraising machine, can not be classified under that paragraph, even if such machines came within the definition of machinery used for the manufacture of sugar.

In answer to the first point it is sufficient to say that the goods under consideration are something more than files. They are files mounted on a metal disk and constitute in truth and in fact an essential part of a particular, specific kind of metal-abrading machine. The fraises are in fact constituent elements of a filing or routing machine. Regarded, however, as separate entities, distinct from the machine of which they were designed to form a part, it is evident that they do not fall within the common understanding of "files," and that for any practical purpose they could not be efficiently used as files. We are therefore of opinion that the importation is not dutiable under paragraph 131, as claimed by the Government.

The second contention of the appellant reduces itself to the proposition that only such machinery can be classified as machinery for the manufacture of sugar as is actually employed in one or other of the processes required for the making of sugar, and that machines exclusively or chiefly used to make such machinery serviceable do not fall within that category. We do not think that that interpre-

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tation can be sustained, inasmuch as it would exclude from the operation of the provision under consideration all auxiliary machines not only chiefly but exclusively used in the manufacture of sugar and just as essential to such manufacture as the machinery required for the processing of the raw material out of which the sugar is made. If machinery which intervenes directly in the development of the finished product is machinery for use in the manufacture of sugar, then, in our opinion, machines which are necessarily and exclusively or chiefly used to make the operation of such machines commercially practical, efficient, and economical, must likewise be so regarded. To hold otherwise would result in an anomaly which we do not believe it was the intention of Congress to perpetrate. In our opinion the obvious intent of the provision was to favor the sugar-making industry and give the benefit of free entry at least to all machinery peculiar to and chiefly or exclusively used by sugar factories. That is to say, any machine constituting a necessary and essential part of the equipment of sugar factories and which is exclusively or chiefly used by them comes within the designation of "machinery for use in the manufacture of sugar." Beet-knife sharpeners, as disclosed by the record, are just as indispensable to a beet-sugar factory as are beet-cutting machines. They constitute a necessary part of the factory equipment and are not only chiefly used, but apparently exclusively used, by such factories. They are, therefore, we think, entitled to free entry.

We now come to the consideration of whether parts of machinery for use in the manufacture of sugar are provided for in paragraph 391 and to the discussion of the third point made by the Government. The Government argues that the phrase in paragraph 391 "whether in whole or in parts" relates to "all other agricultural implements" and to none of the articles, appliances, or machines antecedently enumerated. We do not think that this construction of the paragraph can be successfully maintained. Had the particular provision under discussion read "all other agricultural implements, whether in whole or in parts," there might be some ground for the contention made by the Government. The reading of the paragraph, however, is "all other agricultural implements of any kind or description, whether specifically mentioned herein or not," and that language makes it clear that the phrase "whether in whole or in parts" relates not only to agricultural implements which are not specifically designated in the paragraph, but also to those which are so designated. Whether machinery for use in the manufacture of sugar comes within the meaning popularly attributed to the term "agricultural implements" it is unnecessary to decide, inasmuch as Congress has seen fit to enumerate such machinery as agricultural implements. Machinery for use in the manufacture of sugar being

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enumerated as agricultural implements, we must hold that the phrase "whether in whole or in parts" refers to such machinery as one of the agricultural implements *mentioned* in the paragraph. Inasmuch as we have decided that fraising machines for the sharpening of beet knives are machinery for use in the manufacture of sugar, and as fraises are admittedly parts of such machines, it follows that the fraises imported are provided for in paragraph 391, and consequently should have been admitted free of duty.

The decision of the Board of General Appraisers is therefore *affirmed.*

(T. D. 36125.)

Needlebooks.

UNITED STATES *v.* STRAUSS BROS. & CO. (No. 1578).

NEEDLES—NEEDLECASES OR NEEDLEBOOKS.

Paper folders of such a flimsy nature that, unless most carefully handled, their use can not be long continued without crumpling or breaking, are not of the permanent character ordinarily and commonly associated with the terms "needlebooks" and "needlecases." Merchandise consisting of such folders, containing packages of needles of various sizes, is classifiable on the free list, paragraph 555, tariff act of 1913, as needles, and is not dutiable under paragraph 135 as "needlecases or needlebooks furnished with assortments of needles * * *."

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37902.

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Frank P. Wilson* and *Martin T. Baldwin,* special attorneys, of counsel), for the United States.

Comstock & Washburn (*Albert H. Washburn* and *George J. Puckhafer* of counsel) for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Rectangular pieces of lithographed paper, some 9 inches long and 2½ inches wide, folded in the middle, and having pasted on the inside of the folds five packets of needles of different numbers and a cloth stuck with needles of assorted sizes and one bodkin, were classified by the collector of customs at the port of New York as needlebooks, containing an assortment of needles and bodkins. In accordance with that classification the goods were assessed for duty at 20 per cent ad valorem under the provisions of paragraph 135 of the tariff act of 1913, which paragraph, in so far as pertinent to this case, reads as follows:

135. * * * Needle cases or needle books furnished with assortments of needles or combinations of needles and other articles, 20 per centum ad valorem; * * *.

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The importers protested that the goods were needles and that they were therefore entitled to free entry under paragraph 555 of that part of the free list of said act which reads as follows:

(Free list.) That on and after the day following the passage of this act, except as otherwise specially provided for in this act, the articles mentioned in the following paragraphs shall, when imported into the United States * * * be exempt from duty: * * *.

555. Needles, hand-sewing and darning, and needles for shoe machines.

The Board of General Appraisers held that the articles were not needlebooks, and that with the exception of the bodkins the goods should be classified as needles and admitted free of duty. The Government appealed.

The papers containing the needles are lithographed to catch the eye of prospective purchasers, and are of such a flimsy nature that unless most carefully handled their use could not be long continued without crumpling them or breaking them at the fold. They are, in our opinion, simply paper folders and are not of the permanent character ordinarily and commonly associated with the terms "needlebooks" and "needlecases."

The tariff acts of 1890 and 1897 contained no provision for needlebooks or needlecases furnished with needles, and the board and the courts held that such merchandise was not entitled to free entry as needles, but was dutiable at the rate imposed by the statute on the component of chief value. Such needlebooks and needlecases, however, were composed of leather, metal, and paper, and were apparently of a permanent and durable character. They were held to be not mere coverings for needles, but *permanent*, convenient, and ornamental receptacles for needles which, furnished with needles, were designed to be sold as entireties and not as needles. *In re* Wanamaker, G. A. 969 (T. D. 12107) (tariff act of 1890); *In re* Marshall Field, G. A. 3817 (T. D. 17942) (tariff act of 1890); *In re* Dieckerhoff, G. A. 6220 (T. D. 26887) (tariff act of 1897); *In re* Dieckerhoff, Abstracts 29686 (T. D. 32812) (tariff act of 1909); Steinhardt & Bro. *v.* United States (2 Ct. Cust. Appls., 361; T. D. 32092) (tariff act of 1909); *In re* Watson (T. D. 32528) (tariff act of 1909); *In re* H. B. Claflin, Abstract 29891 (T. D. 32842) (tariff act of 1909); *In re* Wyman, Abstract 30564 (T. D. 32960) (tariff act of 1909); Wanamaker *v.* Cooper (69 Fed., 465) (tariff act of 1890); United States *v.* Matthews (78 Fed., 345) (tariff act of 1890); Dieckerhoff *v* United States (151 Fed., 957) (tariff act of 1897); United States *v.* Dieckerhoff (160 Fed., 449) (tariff act of 1897).

The ruling of the courts as to the duty which should be imposed upon needlecases and needlebooks was expressly approved in the tariff act of 1909 by the adoption of paragraph 164, in which it was provided that "needlecases or needlebooks furnished with assort-

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ments of needles or combinations of needles and other articles shall pay duty as entireties according to the component material of chief value therein."

We can find no case, however, in which it has been held by the board or by the courts that goods of the nature of those here in controversy were needlebooks or needlecases classifiable as entireties in accordance with the decisions and the statute just cited. On the contrary, an examination of the decided cases seems to disclose that merchandise substantially identical with the importation here involved was consistently and uniformly admitted to free entry by the board under the free-list provisions for hand-sewing needles in the tariff acts of 1897 and 1909, which provisions differed from paragraph 555 of the tariff act of 1913 only to the extent that they did not provide for needles for shoe machines. In the matter of George Borgfeldt, Abstract 13597 (T. D. 27734) (tariff act of 1897); *In re* Strauss Bros. & Co., Abstract 16351 (T. D. 28361) (tariff act of 1897); *In re* Strauss Bros. & Co., Abstract 16967 (T. D. 28448) (tariff act of 1897); *In re* Emery-Bird-Thayer, Abstract 29685 (T. D. 32812) (tariff act of 1909); *In re* Bernard, Judae & Co., Abstract 29890 (T. D. 32842) (tariff act of 1909); *In re* Pratt & Farmer, Abstract 30565 (T. D. 32960) (tariff act of 1909).

Taking into consideration that under the tariff acts of 1890 and 1897 needlecases and needlebooks containing needles were held to be dutiable as entireties; that under the same acts folders containing needles were held not to be dutiable as needlebooks or needlecases, but free of duty as needles; that it was judicially determined that such folders were not classifiable under paragraph 164 of the tariff act of 1909, which contained a provision for needlebooks and needlecases furnished with needles; and that paragraph 164 of the tariff act of 1909, as well as the paragraphs of the tariff acts of 1890, 1897, and 1909, providing for the free entry of hand-sewing needles, were reenacted in the tariff act of 1913, we think it may well be assumed that the long-continued classification as needles of articles such as those involved in this appeal has received legislative approval.

There is no evidence showing that the goods are known to the trade as needlebooks or needlecases, and in our opinion they do not meet the common or popular understanding of needlebooks or needlecases, and the fact that they are labeled "The Army and Navy Needle Book," and that they are so designated in the invoice, is not sufficient by itself to give them the tariff status of needlebooks, especially when it appears that they have been assigned to a different tariff status by repeated judicial decisions which have apparently received the approval of Congress. See Prosser *v.* United States (1 Ct. Cust. Appls., 29, 31; T. D. 30850); Strakosh *v.* United States (1 Ct. Cust.

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Appls., 360, 361; T. D. 31453); Sheldon *v.* United States (2 Ct. Cust. Appls., 439, 440; T. D. 32199).

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 36126.)

Belting—Leather cut to form.

UNITED STATES *v.* THEODOR KUNDTZ (No. 1595).

BELTING—LEATHER CUT TO FORM—DISTINCTION.

Strips of leather belting, made by gluing together pieces of leather cut to lengths of about 4 feet and so beveled as to give to the strips a uniform thickness when the several pieces have been permanently joined together, are not belting leather cut to form and dutiable under paragraph 451, tariff act of 1909. They are a manufacture of leather and dutiable as such under paragraph 452. Belting leather is a particular kind of leather from which belting is made; leather cut to form is leather cut to shape, but not so far advanced as to constitute a finished, completed manufacture ready for use. The merchandise at bar is belting leather, cut to form, and so far advanced as to form belting, a finished product.

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38115.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Thos. J. Doherty*, special attorney, of counsel), for the United States.

Submitted on record by appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Three strips of belting, made of leather, imported at the port of Cleveland, Ohio, were classified by the collector of customs as manufactures of leather and assessed for duty at 40 per cent ad valorem under the provisions of paragraph 452 of the tariff act of 1909, which paragraph, in so far as it is pertinent to the case, reads as follows:

452. * * * Manufactures of leather, or of which leather is the component material of chief value, not specially provided for in this section, 40 per centum ad valorem; * * *.

The importer protested that the merchandise was dutiable either as band, bend, belting, or rough leather at 5 per cent ad valorem, or as "all other leather" at 15 per cent ad valorem, under paragraph 451, or at 7½ per cent ad valorem as grain, buff, or split leather under paragraph 450. The parts of the paragraphs upon which the importer relies are as follows:

450. * * * Grain, buff, and split leather shall pay a duty of 7½ per centum ad valorem; * * *.

451. Band, bend, or belting leather, rough leather, and sole leather, 5 per centum ad valorem; dressed upper and all other leather, calfskins tanned or

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tanned and dressed, * * * all the foregoing not specially provided for in this section, 15 per centum ad valorem; * * *: *Provided*, That leather cut into shoe uppers or vamps or other forms, suitable for conversion into manufactured articles, and gauffre leather, shall pay a duty of 10 per centum ad valorem in addition to the duty imposed by this paragraph on leather of the same character as that from which they are cut.

The Board of General Appraisers held that the merchandise was belting leather cut to form and that it was therefore subject to a duty of 5 per cent ad valorem under the first clause of paragraph 451, and to the additional duty of 10 per cent ad valorem imposed by the proviso.

From the decision of the board the Government appealed.

As appears from the evidence in the case, the importation consists of three strips of belting, each 50 meters long, one of the strips being 100 millimeters wide by 4½ millimeters thick; another 130 millimeters wide by 5 millimeters thick, and the third 130 millimeters wide by 6 millimeters thick.

The strips are made up by gluing together pieces of leather cut to lengths of about 4 feet and so beveled as to give to the strips a uniform thickness when the several pieces of leather have been permanently joined together.

The Government contends that merchandise of this description is not belting leather cut to form, as found by the board, and we think that the Government's contention must be sustained.

Belting leather, as we understand it, is a particular kind of leather from which belting is made. See United States *v.* Richards (1 Ct. Cust. Appls., 537; T. D. 31548); United States *v.* Crabb (3 Ct. Cust. Appls., 373, 374; T. D. 32964). Leather cut to form as contemplated by the proviso to paragraph 451 is leather which has been cut to shape but which has not been so far advanced as to constitute a finished, completed manufacture, ready for use. Tilge *v.* United States (3 Ct. Cust. Appls., 97; T. D. 32360); Devoy *v.* United States (3 Ct. Cust. Appls., 444; T. D. 33034).

The merchandise is belting, composed, if you will, of lengths of belting leather cut to form, but it can not be said that it is belting leather—that is to say, leather suitable for the manufacture of belting. Neither can it be said that it is leather cut to form suitable for conversion into manufactured articles, inasmuch as it has already been converted into a manufactured article—namely, belting. At some stage in the process of making the belting the pieces of leather of which it is composed were unquestionably belting leather and belting leather cut to form, but when such pieces were not only beveled and made to fit but were permanently fastened together they lost their identity as belting leather and belting leather cut to form and became belting—a manufacture of belting leather cut to form—

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and therefore dutiable as a manufacture of leather. See Tilge *v.* United States and Devoy *v.* United States, *supra;* United States *v.* Richter (2 Ct. Cust. Appls., 167; T. D. 31680); United States *v.* George Meier & Co. (136 Fed., 764); Tidewater Oil Co. *v.* United States (171 U. S., 210, 216).

Whether the protest of the importer was sufficient, it is unnecessary for us to decide, in view of the fact that we find that the merchandise is not belting leather cut to form, but belting, a manufacture of belting leather.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 36127.)

Emigrants' effects.

E. AVERY NEWTON *v.* UNITED STATES (No. 1608).

1. EMIGRANT.

A citizen of the United States after residence in another country is not, upon returning, within the meaning of paragraph 582, tariff act of 1913, which admits free "professional books, implements, instruments, and tools of trade, occupation, or employment in the actual possession of persons emigrating to the United States."

2. CHANGE OF LEGISLATIVE LANGUAGE SIGNIFIES CHANGE OF INTENT.

By changing the language of this paragraph from "persons arriving," in earlier tariff laws, to "persons emigrating," in later ones, Congress evidently intended to narrow the class of persons who might claim under it.

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38141.

[Affirmed.]

Frank L. Lawrence for appellant.

Bert Hanson, Assistant Attorney General (*Robert Hardison*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

On or about September 23, 1913, E. Avery Newton, a citizen of the United States, native born, but who had for five years immediately preceding that date been living and practicing his profession of physician and surgeon in Germany, left that country for this. Which one of our States was the place of his nativity does not appear, but as a witness before the Board of General Appraisers he said, referring to his departure from Germany, "I decided to come home very suddenly on account of death." At that time he owned and had in his possession certain professional books and instruments which he had been using in the practice of his profession in Germany. He was then uncertain in which State he would take up his residence,

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but soon after arriving in this country he selected the city of Los Angeles, Cal., and located there. Immediately thereafter he instructed the keeper for him of the goods in Germany to ship them to Los Angeles, at which place they arrived about February 25, 1914. Upon entry they were assessed for duty under appropriate paragraphs of the tariff act of 1913. The importer protested, claiming free entry under paragraph 582 of the act, which is hereinafter quoted. This in substance provides that the professional books and instruments in the actual possession of "persons emigrating to the United States" shall be given free entry.

Upon hearing the Board of General Appraisers overruled the protest, and the case is here upon the importer's appeal.

He claims (1) that the goods were in his actual possession within the meaning of the paragraph, and (2) that he was at the time he departed from Germany a "person emigrating to the United States."

Of course, if his first contention be decided in his favor, it is of no avail unless it also appears that the second one is sound; hence we consider that first.

As the history of legislation upon this subject may tend to throw some light upon the meaning of the term "persons emigrating to the United States," we now refer thereto.

In the tariff act of 1883 the free list included "books, professional, of persons arriving in the United States," and "professional books, implements, instruments, and tools of trade, occupation, or employment of persons arriving in the United States"; and this is the earliest statute upon the subject to which our attention has been called.

In the act of 1890 the foregoing provisions seem to have been consolidated in paragraph 686. Hereinbelow we insert it and all other relevant free-entry paragraphs in succeeding tariff acts:

1890.

686. Professional books, implements, instruments, and tools of trade, occupation, or employment in the actual possession at the time of persons arriving in the United States; * * *.

1894.

596. Professional books, implements, instruments, and tools of trade, occupation, or employment in the actual possession at the time of persons arriving in the United States; * * *.

1897.

645. Professional books, implements, instruments, and tools of trade, occupation, or employment in the actual possession at the time of persons emigrating to the United States; * * *.

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1909.

656. Professional books, implements, instruments, and tools of trade, occupation, or employment in the actual possession at the time of arrival of persons emigrating to the United States; * * *.

1913.

582. Professional books, implements, instruments, and tools of trade, occupation, or employment in the actual possession of persons emigrating to the United States; * * *.

It will be noticed from the foregoing that the earlier statutes gave the privilege of free entry of the prescribed merchandise to "persons arriving in the United States," while, since 1897, it has only been allowed to persons *emigrating* to this country. The importer avers he is such a person and, in the first instance, his case stands or falls upon this claim.

We do not deem it necessary to enter, as we might, into a lengthy analytical discussion of the meaning of the word "emigrate," from which "emigrating" is derived. It is apparent that the Congress by substituting for the expression "persons arriving in the United States" that of "persons emigrating to the United States" designed to narrow the class of persons members of which might claim the exemption benefit. *Arriving* would apparently cover *all* persons reaching this country; and, if that were desired, there was no occasion to substitute *emigrating* therefor.

As an aid in the determination of the meaning of the word *emigrating*, we insert here some of the meanings attributed to "emigrate" by various lexicographers:

Standard Dictionary:

To go from one country, State, or region for the purpose of settling or residing in another; remove from home or native land.

Oxford Dictionary:

1. To remove out of a country for the purpose of settling in another. (b) In wider sense: To remove from one place to another. *Rare.*

Webster's Dictionary:

To leave a place of abode, esp., a country or State, for life or residence in another; to migrate.

Century Dictionary:

Move away, remove, depart. To quit one country, State, or region and settle in another; remove from one country or region to another for the purpose of residence; as Europeans *emigrate* to America.

The broadest of the foregoing definitions might possibly admit the conclusion that *emigrating* described the status of the importer when he was leaving Germany; and, had the change in the statute not been made, he would have been within its provisions at the time

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he *arrived* here. We think, however, in view of the legislative history and the context, the expression "persons emigrating to the United States" should be held to mean, as applied to the facts here, persons not citizens of this country who quit their own home or country and come here for the purpose and with the intent of establishing here their residence. Obviously, we think, *emigrating* is commonly understood to be the removal from one's country, home, or native land to another country, there to reside, and the *emigrant* who does this becomes, in the ordinary acceptation of the term, an *immigrant* in the land or country to which he so removes.

The importer here does not answer to these requirements; confessedly, he "decided to come home" when he left Germany for the United States, which was his birthplace, the country of which he was then a citizen, and his home.

In G. A. 4336 (T. D. 20610), decided in January, 1899, construing paragraph 645 of the act of 1897, the precise question here under discussion was considered by the board and the same conclusion reached. We quote with approval from the board's decision in that case:

> It being admitted that the protestant was a citizen of the United States, which necessarily implied the corollary of residence in this country at the time he went back to Europe, his return from that country to the country of his political citizenship would not, in our judgment, constitute him an emigrant from Germany within the meaning of the law under consideration.

The board in the cited opinion well observes that Vattel in his "Treatise on the Law of Nations" defines an "emigrant" as—

> One who quits his country for any lawful reason, with a design to settle elsewhere, and who takes his family and property, if he has any, with him.

If Congress had disagreed with this interpretation of the act of 1897 it might well have revised the language of the paragraph in later acts; instead, however, it appears to have twice deliberately reenacted the same.

The Supreme Court in the Head Money cases (112 U. S., 580, at 595), speaking of "An act to regulate immigration," used the following language (italics ours):

> Its provisions * * * relate to the subject of immigration, and they are aptly designed to mitigate the evils inherent in the business of bringing *foreigners* to this country, as those evils affect both the immigrant and the people among whom he is suddenly brought and left to his own resources.

As we have already remarked, the *emigrant* abroad, embarking for this country, becomes the *immigrant* upon his arrival here, and, while the Supreme Court in the cited case was not undertaking to define either of these terms, it used in the language quoted the word "immigrant" as meaning a *foreigner* coming to our shores.

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The importer is not a foreigner, but is a native-born citizen. He is not an immigrant here, but is a citizen returning home. He is not, therefore, entitled to free entry of the goods in question.

The judgment of the Board of General Appraisers is *affirmed*.

(T. D. 36128.)

Mi-coquille glasses—Disks for automobile goggles.

SEMON BACHE & CO. *v.* UNITED STATES (No. 1583).

1. AUTOMOBILE GOGGLES NOT OPTICAL INSTRUMENTS, SPECTACLES, OR EYEGLASSES.

Glass disks, rough cut or unwrought, made from crown or cylinder glass, bent, known to the trade as mi-coquille glasses, which are chiefly used in the manufacture of automobile goggles to protect the eyes from dust or wind, which do not in any manner transform the rays of light which pass through them or affect the focus of the eyes in any way and which are not capable of being ground into lenses for any such purpose, are not admissible free under paragraph 557, tariff act of 1909, as being "for use in the manufacture of optical instruments, spectacles, and eyeglasses, and suitable only for such use."

2. CONSTRUCTION—LANGUAGE OF ONE PARAGRAPH AS AID IN CONSTRUING ANOTHER.

From the use of the words "spectacles, eyeglasses, and goggles" in paragraph 105, and "spectacles and eyeglasses" only, goggles being omitted, in paragraph 577, it may be reasonably inferred that Congress understood goggles to be different things from spectacles or eyeglasses and deliberately refrained from making material for them dutiable under paragraph 577.

3. REHEARING—DISCRETION OF BOARD TO GRANT.

The denial by the board of a rehearing to permit the introduction of the record of another case involving similar or identical merchandise, this motion having been denied "for the present" at the hearing of the cause, and no further mention of it appearing in the record until after the publication of the board's decision, the record in this court showing with reasonable certainty the character and uses of the merchandise at bar, is not an abuse of the discretion vested in it by section 12, customs administrative law, permitting it to grant a rehearing "when in their opinion the ends of justice may require it," and rule 34 of its own rules of procedure, permitting the introduction of such record "within the discretion of the board."

United States Court of Customs Appeals, January 22, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37674.

[Affirmed.]

Walter Evans Hampton for appellants.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell* of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in this case consists of glass disks which are made from crown or cylinder glass, bent, and are called mi-coquille

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glasses. They bear a general resemblance to ordinary watch crystals in size and shape, but are not beveled.

The articles were assessed with duty at 1⅜ cents per pound and 5 per cent ad valorem as unpolished crown or cylinder glass, bent, under paragraphs 99 and 104 of the tariff act of 1909.

The importers protested against the assessment, claiming free entry for the merchandise as glass disks, rough-cut and unwrought, "for use in the manufacture of spectacles, eyeglasses, etc.," under paragraph 577 of the same act.

The protest was submitted to the Board of General Appraisers and was overruled, from which decision the importers now appeal.

The following paragraphs are therefore called into question:

99. Unpolished, cylinder, crown, and common window glass, not exceeding one hundred and fifty square inches, valued at not more than one and one-half cents per pound, one and one-fourth cents per pound; valued at more than one and one-half cents per pound, one and three-eighths cents per pound; above that, and not exceeding three hundred and eighty-four square inches, valued at not more than one and three-fourths cents per pound, one and three-fourths cents per pound; valued at more than one and three-fourths cents per pound, one and seven-eighths cents per pound; above that, and not exceeding seven hundred and twenty square inches, valued at not more than two and one-eighth cents per pound, two and one-fourth cents per pound; valued at more than two and one-eighth cents per pound, two and three-eighths cents per pound; above that, and not exceeding eight hundred and sixty-four square inches, two and three-fourths cents per pound; above that, and not exceeding one thousand two hundred square inches, three and one-fourth cents per pound; above that, and not exceeding two thousand four hundred square inches, three and three-fourths cents per pound; above that, four and one-fourth cents per pound: *Provided*, That unpolished cylinder, crown, and common window glass, imported in boxes, shall contain fifty square feet, as nearly as sizes will permit, and the duty shall be computed thereon according to the actual weight of glass.

104. Cast polished plate glass, silvered or unsilvered, and cylinder, crown, or common window glass, silvered or unsilvered, polished or unpolished, when bent, ground, obscured, frosted, sanded, enameled, beveled, etched, embossed, engraved, flashed, stained, colored, painted, ornamented, or decorated, shall be subject to a duty of five per centum ad valorem in addition to the rates otherwise chargeable thereon.

577. Glass plates or disks, rough-cut or unwrought, for use in the manufacture of optical instruments, spectacles, and eyeglasses, and suitable only for such use: *Provided, however*, That such disks exceeding eight inches in diameter may be polished sufficiently to enable the character of the glass to be determined.

In order to bring the present articles within the description of paragraph 577 of the free list, it must appear that they are glass plates or disks; that they are rough cut or unwrought; that they are for use in the manufacture of optical instruments, spectacles, or eyeglasses; and that they are suitable only for such use.

It is conceded that the articles are glass disks, and the testimony is wholly to the effect that they are rough cut or unwrought.

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As to the use for which the glasses are adapted there is some conflict in the testimony. It fairly appears, however, that they are sometimes mounted for use in spectacle frames, and sometimes in the form of eyeglasses, but that their chief use is in the manufacture of automobile goggles. The glasses are simply disks of plain, clear, bent glass, and are not designed to aid defective vision. They do not in any manner transform the rays of light which pass through them, nor do they affect the focus of the eyes in any way, nor is it claimed that they are capable of being ground into lenses for any such purpose. They are used exclusively in protecting the eyes from dust and wind.

It appears from the testimony that glasses of similar shape but of larger size are sometimes used as faces for cheap clocks or speedometers, but plainly the present sizes can not be thus used. It also appears that they could not be used as watch crystals without first being beveled, and that this can not be done with profit in this country.

The sole question, therefore, in the present case is whether the uses above stated bring the present glasses within the limitations of the paragraph in question—namely, glass disks "for use in the manufacture of optical instruments, spectacles, and eyeglasses, and suitable only for such use." This question must be answered according to the common or ordinary definitions of the terms in question, since no peculiar commercial meaning of the terms appears in the record.

As has been stated the present glasses are sometimes mounted for use in the frames or forms of spectacles or eyeglasses, but most of them are used in the manufacture of automobile goggles. It can not be said, therefore, that they are suitable for use only in the manufacture of optical instruments, spectacles, and eyeglasses, unless automobiles goggles when fitted with such glasses are either optical instruments, spectacles, or eyeglasses within the ordinary meaning of those terms.

Without attempting to formulate any exhaustive definition of the term "optical instruments," we may say that we do not consider it applicable to goggles such as do not in any manner affect the rays of light passing through them, nor alter or affect the vision which is thereby produced. The importers have not distinctly contended that the present glasses are for use in the manufacture of "optical instruments," but the use of the term "etc." in their protest, in connection with "spectacles and eyeglasses," probably brings the question into the case.

The next question in the case is whether automobile goggles when equipped with these glasses may properly come within the terms "spectacles and eyeglasses." It is true in a certain sense that goggles are a peculiar kind of spectacles, and that the word is thus

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defined in most of the dictionaries. Nevertheless in ordinary speech automobile goggles do not generally pass under the name of spectacles or eyeglasses, and it would be a strained and unnatural use of the latter terms to apply them to such articles. Inasmuch as the provision in question is restrictive in character and is designed to allow free entry to such glass disks only as are suitable for certain specified purposes, the court should not place such a construction upon its terms as would really break down the intended restriction and permit free entry to articles which do not fairly or naturally respond to its conditions.

This conclusion finds support in the language of paragraph 105 of the tariff act of 1909, which reads as follows:

105. Spectacles, eyeglasses, and goggles, and frames for the same, or parts thereof, finished or unfinished, valued at not over 40 cents per dozen, 20 cents and 15 per centum ad valorem; valued at over 40 cents per dozen and not over $1.50 per dozen, 45 cents per dozen and 20 per centum ad valorem; valued at over $1.50 per dozen, 50 per centum ad valorem.

It will thus be seen that in the dutiable paragraph of the same tariff act relating to similar merchandise, Congress when levying the same rate of duty upon spectacles, eyeglasses, and goggles felt it to be necessary or at least expedient to specify "goggles" as well as "spectacles" and "eyeglasses" in the same clause, thus implying that the latter terms would not *ex proprio vigore* include the former. When, therefore, Congress in the same tariff act limited the free entry of unwrought glass disks to such only as were suitable for use in the manufacture of spectacles and eyeglasses, without mention of goggles, it may reasonably be inferred that disks suitable for the latter use were not intended to be included therein.

The foregoing conclusion is further supported by the fact that glasses similar to the present ones came before the board in the case of Strauss Bros. & Co., G. A. 6783 (T. D. 29117), and were denied free entry under paragraph 565 of the tariff act of 1897, the predecessor of the present provision. It was said by the board, "it appears from the evidence that the disks in question are used exclusively in the manufacture of goggles, which are neither optical instruments, spectacles, nor eyeglasses." This decision was called to the attention of Congress in "Notes on Tariff Revision," 715, and the paragraph was reenacted in the same words as those therein construed.

The following decisions of the board relate to merchandise for which free entry was claimed under the same provision as that contained in paragraph 577, *supra:* G. A. 2402 (T. D. 14644); G. A. 5252 (T. D. 24150); G. A. 5662 (T. D. 25252); G. A. 6071 (T. D. 26479); G. A. 6783 (T. D. 29117); G. A. 6823 (T. D. 28327); G. A. 6961 (T. D. 30266); G. A. 7493 (T. D. 33579).

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Some of these decisions are cited by the importers in support of their present claim. It is true that in some of the cases the board may have had before it merchandise somewhat similar to that herein involved and held it to be free of duty under such a provision as that now in question, but in no such case was it stated that the merchandise in question was suitable for use in the manufacture of goggles. In each case wherein the merchandise was held to be free of duty under such a provision the decision was predicated upon an express finding that the merchandise was "for use in the manufacture of optical instruments, spectacles, and eyeglasses, and suitable only for such use." In the case of Strauss Bros. Co., *supra*, the present question came for the first time squarely before the board, and the board held that glasses designed chiefly for use in the manufacture of goggles could not share in the description of "glass disks * * * for use in the manufacture of optical instruments, spectacles, and eyeglasses, and suitable only for such use." The reenactment by Congress of the relevant provision construed in that case in the same terms in the tariff act of 1909 is a fact which is entitled to weight in the present controversy.

At the trial before the board the importers' counsel moved that the record in the case of Hammel, Riglander & Co. G. A. 5662 (T. D. 25252) be incorporated in the record in the present case. The board, however, announced that the motion would be denied "for the present." No further mention of the matter appears in the present record until after the decision of the board was published. Thereupon the importers' counsel filed a motion for a rehearing in order that the motion above referred to might be considered and finally ruled upon. The importers' counsel upon oath stated that he "believes that it can be shown that the merchandise in G. A. 5662 (T. D. 25252) is similar or identical with" that involved in the present suit. The board overruled the application for a rehearing, and its action in that behalf is assigned as error by the appellants.

Under rule 34 of the board's rules of procedure (T. D. 30506) it is provided that where a question of the classification of imported merchandise is under consideration for decision by any one of the boards, and a decision has been previously made involving the classification of goods substantially the same in character, the record and testimony taken in the latter case may, *within the discretion of the board*, be admitted as evidence in the pending case on motion of either the Government or the importer, or on the board's own order.

Under section 12 of the customs administrative provisions it is provided that the board of three general appraisers, or a majority of them, who decided the case, may, upon motion of either party made within 30 days next after their decision, grant a rehearing or

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a retrial of said case *when in their opinion the ends of justice may require it.*

In reviewing the record we are satisfied that there was no abuse of the discretion which was vested in the board by the several foregoing provisions. The character of the merchandise on trial and its uses appear with reasonable certainty in the present record, and the issue in the case after all becomes a question of the proper construction of the terms of paragraph 577, *supra*, according to the ordinary signification of the terms therein used.

See also United States *v.* American Thermo-Ware Co. (2 Ct. Cust. Appls., 9; T. D. 31571); United States *v.* American Thermo-Ware Co. (4 Ct. Cust. Appls., 21; T. D. 33218); and American Thermo-Ware Co. *v.* United States (6 Ct. Cust. Appls., —; T. D. 35465), noting, however, that the present claim for free entry under paragraph 577, *supra*, or its predecessor was not put in issue in any of these cases.

The decision of the board overruling the protest claiming free entry for the merchandise is therefore *affirmed.*

(T. D. 36129.)

Wood shaving ropings—Chip.

Appeal directed from decision of the Board of United States General Appraisers of December 17, 1915, Abstract 38962, involving the classification of certain wood shaving ropings.

TREASURY DEPARTMENT, *January 31, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 22d instant, inviting attention to the decision of the Board of United States General Appraisers of December 17, 1915, Abstract 38962, wherein certain wood shaving ropings, which had been assessed with duty at the rate of 20 per cent ad valorem under the provisions of paragraph 368 of the tariff act of October 3, 1913, for manufactures of chip, were held by the board to be dutiable at the rate of 15 per cent ad valorem under the provisions of paragraph 176 of the said act as manufactures of wood.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(104581.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36130.)

Pathescopes—Moving-picture machines.

Appeal directed from decision of the Board of United States General Appraisers of December 8, 1915, G. A. 7826 (T. D. 35970), involving the classification of certain pathescopes, or moving-picture machines.

TREASURY DEPARTMENT, *January 31, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 25th instant, inviting attention to the decision of the Board of United States General Appraisers of December 8, 1915, G. A. 7826 (T. D. 35970), wherein certain moving-picture machines, known as pathescopes, which had been assessed with duty at the rate of 35 per cent ad valorem under the provision of paragraph 93 of the tariff act of 1913 for "optical instruments and frames and mountings for the same," were held by the board to be dutiable at the rate of 25 per cent ad valorem under paragraph 94 of the said act as frames and mountings for projection lenses.

In accordance with your recommendation you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(104587.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36131.)

Drawback on cigarettes and smoking tobacco.

T. D. 35449 of May 26, 1915, extended to cover cigarettes and smoking tobacco manufactured by the British-American Tobacco Co. at their factory located in Richmond, Va.

TREASURY DEPARTMENT, *January 31, 1916.*

SIR: The department's regulations of May 26, 1915 (T. D. 35449), providing for the payment of drawback on cigarettes and smoking tobacco manufactured by the British-American Tobacco Co. at their factory located at Petersburg, Va., with the use of imported materials and materials manufactured from imported materials, are hereby extended to cover similar articles manufactured by the said company at their Richmond, Va., factory with the use of imported materials and materials manufactured from imported materials.

The sworn statement of the manufacturers, dated January 11, 1916, is transmitted herewith for filing in your office.

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Drawback may be allowed under these regulations on cigarettes and smoking tobacco exported on or after November 22, 1915.

Respectfully, ANDREW J. PETERS,
(103684.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36132.)

Drawback on fur skins, etc.

Drawback on fur skins, etc., or parts of fur skins exported after having been dyed, redyed, or reblended by H. F. Bindseil & Son, of Long Island City, N. Y.—T. D. 22446 of August 21, 1900, and T. D. 28945 of April 20, 1908, revoked.

TREASURY DEPARTMENT, *February 1, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on imported fur skins, plates, heads, tails, and other parts of fur skins exported after having been dyed, redyed, or reblended by H. A. Bindseil & Son, of Long Island City, N. Y.

A record shall be kept by the manufacturers, which will show, in the case of each imported lot of fur skins, etc., dyed, redyed, or reblended for exportation with benefit of drawback, the lot number and the import data covering the same, the number of pieces of fur skins, etc., of each kind contained in said lot, the identifying marks on each piece, and the manner in which manufactured. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

The allowance shall not exceed one imported article for each exported dyed, redyed, or reblended article of like kind, size, and value.

The sworn statement of the manufacturers, dated December 20, 1915, is transmitted herewith for filing in your office.

In case the import invoice shows the several values of the fur skins, etc., upon which the assessment of duty was based, compliance with the expressed agreement of the manufacturers to claim drawback only where entire import lots are exported is not essential.

Supplemental sworn statements covering other parts of fur skins dyed, redyed, or reblended may be filed, and upon verification of the same drawback may be allowed on the articles covered thereby.

T. D. 22446 of August 21, 1900, and T. D. 28945 of April 20, 1908, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(1339k.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36133.)

Drawback on skirts.

Drawback on skirts manufactured by S. Korach & Co., of Cleveland, Ohio, with the use of imported cloths.

TREASURY DEPARTMENT, *February 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on skirts manufactured by S. Korach & Co., of Cleveland, Ohio, with the use of imported cloths.

A manufacturing record shall be kept, which will show, in the case of each lot of skirts manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of skirts produced, the quantity, value, and identity of the imported cloth appearing therein, and the quantity and value of waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported cloth appearing in the exported skirts, with an addition to compensate for waste, as shown by the sworn abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

The sworn statement of the manufacturers, dated January 21, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on skirts exported on or after December 2, 1915.

Respectfully, ANDREW J. PETERS,
(93859-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 36134.)

Drawback on semiautomatic switchboard equipment.

Drawback on semiautomatic switchboard equipment manufactured by the Western Electric Co., of Chicago, Ill., with the use of imported parts.

TREASURY DEPARTMENT, *February 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on semiautomatic switchboard equipments manufactured by the Western Electric Co., of Chicago, Ill., with the use of imported parts.

A manufacturing record shall be kept, which will show, in the case of each semiautomatic switchboard equipment manufactured for exportation with benefit of drawback, the date of manufacture thereof and the number and identity of imported parts of each kind appearing

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therein. A sworn abstract from such manufacturing record shall be filled with or made a part of the drawback entry.

The allowance shall not exceed the number of imported parts of each kind appearing in the exported semiautomatic swtichboard equipments, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated January 25, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on semiautomatic switchboard equipments exported on or after December 11, 1915.

Respectfully, ANDREW J. PETERS,
(93450.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 36135.)

Drawback on confectionery.

Drawback on confectionery manufactured by Lewis Bros., of Newark, N. J., with the use of imported almonds and gelatin and refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *February 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on confectionery manufactured by Lewis Bros., of Newark, N. J., with the use of imported almonds and gelatin and with the use of refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept, which will show, in the case of each lot of confectionery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantities and identity of refined sugar, imported almonds, and imported gelatin used, and the kind and quantity of confectionery obtained. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

The quantities of refined sugar, imported almonds, and imported gelatin which may be taken as a basis for the allowance of drawback shall not exceed the quantities used in the manufacture of the exported confectionery, as shown by the abstract from the manufacturing record, with a maximum of the quantities specified in the sworn statement of the manufacturers, dated December 22, 1915, which is transmitted herewith for filing in your office.

Supplemental sworn schedules covering other kinds of confectionery may be filed, and upon verification thereof drawback may be allowed on the confectionery covered thereby.

Respectfully, ANDREW J. PETERS,
(100732-3.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36136.)

Drawback on tractors.

Drawback on tractors manufactured by the Milwaukee Locomotive Manufacturing Co., of Milwaukee, Wis., with the use of imported ball bearings and aluminum castings manufactured by the Werra Aluminum Foundry Co. with the use of imported aluminum.

TREASURY DEPARTMENT, *February 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on automobile tractors manufactured by the Milwaukee Locomotive Manufacturing Co., of Milwaukee, Wis., with the use of imported ball bearings and aluminum castings manufactured by the Werra Aluminum Foundry Co. from imported aluminum, upon the filing by the latter named company of a sworn schedule covering the castings, in accordance with the requirements of T. D. 35195 of March 9, 1915.

A manufacturing record shall be kept by the Milwaukee Locomotive Manufacturing Co., which will show, in the case of each automobile tractor manufactured for exportation with benefit of drawback, the serial number thereof, the rough and finished weights of the aluminum castings used in the manufacture thereof, and the quantity and value of the waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the number of imported ball bearings appearing in the exported automobile tractors and the quantity of imported aluminum used in the manufacture thereof, as shown by the abstract from the manufacturing record prescribed above, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

The sworn statement of the manufacturers, dated January 21, 1916, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(104459.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Milwaukee, Wis.*

(T. D. 36137.)

Paper.

Certain so-called sheathing paper, consisting of dry, unsaturated felt paper, dutiable at the rate of 25 per cent ad valorem under paragraph 332, tariff act of October 3, 1913, as paper not specially provided for.

TREASURY DEPARTMENT, *February 3, 1916.*

SIR: The department refers to your letter of the 26th ultimo and other correspondence, relative to the classification of certain so-called sheathing paper, similar to samples submitted.

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It appears that the merchandise is a dry and unsaturated felt paper and that it has been your practice to assess duty on such merchandise at the rate of 5 per cent ad valorem under paragraph 320 of the tariff act as sheathing paper, while the C. V. R. bureau at New York has advised you that in its opinion the merchandise is subject to duty at the rate of 25 per cent ad valorem under paragraph 332 of the tariff act as paper not specially provided for.

The report from the collector at New York shows that inquiry revealed the fact that the felt is very similar to what is known in the trade as deadening felt, which, it appears, is used as imported to deaden sound under carpets or floors, or, after being saturated with tar or asphaltum, as a roofing felt.

While you state that the paper in question is used in many cases as sheathing paper, it appears that it is too absorbent to be generally used to sheath houses, and that the sheathing paper of commerce is a rosin-sized paper that will not readily absorb moisture which may penetrate the outside siding of a building. It also appears that the paper under consideration is not known as a roofing felt until it has been saturated.

In view of the foregoing, the department concurs in the view that the merchandise in question is properly dutiable at the rate of 25 per cent ad valorem under paragraph 332 of the tariff act as paper not specially provided for.

You will be governed accordingly on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof.

Respectfully, ANDREW J. PETERS,
(104390.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *St. Albans, Vt.*

(T. D. 36138.)

Plant-quarantine act—Definition of cotton.

Collectors informed what is included in the term "cotton," for the purposes of the regulations of the Department of Agriculture governing the importation of cotton under the plant-quarantine act.

TREASURY DEPARTMENT, *February 7, 1916.*

To collectors of customs:

At the request of the Secretary of Agriculture, you are informed that for the purposes of the regulations governing the importation of cotton, issued by the Department of Agriculture under the plant-quarantine act (T. D. 35486 and T. D. 36062), the term "cotton" is construed to mean "raw or unmanufactured cotton lint, either baled or unbaled, including all cotton which has not been woven or spun or otherwise manufactured, such as all forms of cotton waste, including

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thread waste, card strips, willowed fly, willowed picker, picker or blowings, and chum and cotton waste in any other form or under any other trade designation."

Collectors will be governed accordingly.

(92655–19.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36139.)

Inspection and gauging of alcohol.

Collectors of customs authorized to permit the gauging of not less than three packages of each carload lot, and in certain cases one package in every ten of each lot or shipment, of domestic alcohol withdrawn from distillery warehouse for exportation.

TREASURY DEPARTMENT, *February 7, 1916.*

To collectors of customs and others concerned:

To facilitate the exportation of domestic spirits withdrawn from distillery warehouses for exportation under Internal Revenue regulations No. 29, the collectors of customs will direct the inspection and gauging of not less than three casks or packages in each carload lot where such spirits are shipped in sealed cars and such seals are intact. A greater number of packages may be gauged if the collector shall deem the same necessary. Where the cars arrive with the seals broken or removed therefrom, the collector will direct the gauging of each package in the car.

Spirits which have heretofore arrived at the place of exportation in cars from which the railroad seals have not been removed and are intact, will be gauged in accordance with the foregoing provisions.

The collector will permit the gauging of one package of every ten of each lot or shipment of spirits which has arrived at the place of exportation prior to the issuance of these regulations, and has been unloaded from the cars unless fraud or loss by theft or otherwise is believed to exist, in which case every package of each lot or shipment will be gauged.

Bonded carriers to which shipments of spirits are delivered for transportation will procure from the International Seal & Lock Co., of Hastings, Mich., "Tyden" seals for securing cars containing the spirits in question, similar to the seals now in use in the custom service which bear the name of the place where used, the letters and words "U. S. C. in Bond," and having a red bulb, for use until such time as the Commissioner of Internal Revenue may adopt a suitable seal.

The seals will be delivered by the carrier upon receipt from the manufacturer to the collector of internal revenue for the district in which the spirits are withdrawn, or to such deputy collector of internal revenue as the collector may direct, for use by and under the directions of the internal-revenue office.

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These regulations will be subject to revocation immediately upon the necessity for their issuance being removed.

(104429.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36140.)

Powers of attorney.

Notice of revocation of power of attorney should be given to the collector with whom a copy has been filed.

TREASURY DEPARTMENT, *February 4, 1916.*

SIR: The department is in receipt of your letter of the 4th ultimo in regard to the acceptance of a power of attorney filed with the collector at New York and a certified copy forwarded for use at your port.

You state that the power of attorney in question contains a clause which provides that the power is to remain in full force and effect until duly revoked and notice thereof given to and received by the collector of customs at the port of New York, and you contend that this clause is objectionable for the reason that the revenues might be endangered, as the agent acting under such power at your port might continue to act between the dates when the notice of the revocation was filed with the collector of customs at New York and the notice of such revocation received at your port.

The department recognizes the force of this objection, but is of the opinion that such a power should be accepted by you and the donor of the power notified by you in writing that such power will be recognized as valid until notice is received by you that it has been revoked, and that notice of the revocation should be given to your office at the same time that notice is given to the collector at the port where the original power is filed.

Respectfully, ANDREW J. PETERS,
(102824) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36141—G. A. 7850.)

Beaded and spangled trimmings.

TRIMMINGS—BEADS AND SPANGLES—CHIEF VALUE.

Trimmings composed of a foundation of silk netting ornamented with beads and spangles, the beads and spangles when taken together constituting the component material of chief value, but the silk netting being of greater value than either the beads or spangles when taken separately, are properly dutiable at the rate of 50 per cent ad valorem under the provision in paragraph 333, tariff act of 1913, for

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"curtains, and other articles * * * composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material." In construing that provision, *held* that it was intended to include therein articles composed wholly or in chief value of beads or of spangles, or of a combination of those materials.

United States General Appraisers, New York, January 31,1916.

In the matter of protests 768116, etc., of J. J. Gavin & Co. against the assessment of duty by the collector of customs at the port of New York.

Strauss & Hedges (*Jacob L. Klingaman* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* The merchandise in question consists of trimmings composed of a foundation of silk netting ornamented with beads and spangles. The silk netting is of a greater value than either the beads or the spangles taken separately, but the beads and spangles taken together are more valuable than the silk netting. The merchandise was assessed for duty at the rate of 60 per cent ad valorem under the provision in paragraph 358, tariff act of 1913, for "trimmings * * * of whatever yarns, threads, or filaments composed." It is claimed to be dutiable at the rate of 50 per cent ad valorem under the provision in paragraph 333 of said act, which reads as follows:

333. * * * Curtains, and other articles not embroidered nor appliquéd and not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, 50 per centum ad valorem.

The articles are not embroidered nor appliquéd, and they are not, therefore, excluded by its extruding terms from paragraph 333. The only question for decision is whether the provision in paragraph 333 for articles composed in chief value of beads or spangles is broad enough to cover an article in which the beads and spangles taken together constitute the component material of chief value, or whether the beads and spangles in an article must be considered as separate or single components, one of which must be of greater value than any other single component in order to bring the article within the provision of said paragraph.

In his brief the Assistant Attorney General insists that by the use of the word "or" in this paragraph between the word "beads" and the word "spangles," Congress has named those two materials disjunctively, and that there is nothing in the paragraph to justify adding together the values of the two materials in determining the component material of chief value in an article.

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In tariff legislation, however, the word "or" is not always used in the limited sense which the Assistant Attorney General suggests. Sometimes it is used by way of addition, as the equivalent for "and"; sometimes as a conjunction coordinating two or more words as indicating alternative designations for the same article. In United States *v.* Giese (83 Fed., 692) the court construed the provision in the tariff act of 1894 for "potash, crude, carbonate of, or 'black salts,'" as providing for "crude potash, carbonate of potash, *and* black salts." In Weilbacher *v.* Merritt (37 Fed., 85) it was held that in the provision for "gum substitute, or burnt starch," Congress merely gave one article two names. In Schiff's case, G. A. 4525 (T. D. 21502), this board held that the provision in paragraph 409, tariff act of 1897, for "hats, bonnets, and hoods, composed of straw, chip, grass, palm leaf, willow, osier, or rattan," included such articles when composed in chief value of any one of those substances or of a combination of them.

In Stein's case, G. A. 7232 (T. D. 31672), the board held that, although edgings and insertings made on the Lever or Gothrough machine were separately provided for in paragraph 350, tariff act of 1909, it was proper to combine the value of such materials found in an imported article in order to ascertain whether the article was dutiable, by virtue of the proviso to that paragraph, as an article composed wholly or in chief value of one of the materials therein named. Paragraph 350 read as follows:

350. Laces, embroideries, edgings, insertings, galloons, flouncings, nets, nettings, trimmings, and veils, composed of cotton, silk, artificial silk, or other material (except wool), made on the Lever or Gothrough machine, seventy per centum ad valorem: *Provided*, That no wearing apparel, handkerchiefs, or articles of any description, composed wholly or in chief value of any of the foregoing, shall pay a less rate of duty than that imposed upon the articles or the materials of which the same are composed.

The importers took the position that under that paragraph the material of chief value must be *either* a Lever edging *or* a Lever inserting, and that edgings and insertings could not be treated as the same sort of material so as to justify the consideration of their combined value. We did not agree with that contention, and said, in part:

Manifestly the proviso to paragraph 350 was designed to levy a duty of 70 per cent ad valorem upon wearing apparel, handkerchiefs, or other articles whenever the chief value in the completed article is found in that portion or portions of the article composed of material made on the Lever or Gothrough machine, and in articles like the handkerchiefs before us, which are made in part of edgings and insertings produced on the Lever or Gothrough machine, it matters not whether the chief value is in the edging or the inserting, or whether it is in the combined value of the edging and the inserting. In other words, the article may be composed in part of several of the various materials or articles provided for in the body of the paragraph in which the proviso occurs, and the combined value of those materials or articles as found in

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the imported article is to be compared with the value of each of the other components in the handkerchiefs. Under this statute all the Lever or Gothrough material is to be considered as one component material, the value of which is to be compared with the value of every other component material. The manifest purpose of the proviso is to prevent the assessment of a lower rate of duty on articles made wholly or in chief value from the various materials or articles specified in the body of the paragraph than would be imposed upon such materials or articles when imported as separate entities. This result will only be obtained when the value of all the Lever or Gothrough material in the article is ascertained, whether that value all rests in one of the articles or materials used or more than one, and such value is compared with the value of each of the other component materials in the completed article.

We can conceive of no good reason why the word "or" appearing in paragraph 333 should be given the narrow meaning which the Assistant Attorney General contends for. Beads and spangles are articles of a very similar character, and in use they are closely associated. We think that Congress intended by the provision in paragraph 333 to place beads and spangles in the same category for dutiable purposes, and did not intend that they should be treated as separate component materials. As suggested by counsel for the importers, the Government's contention would lead to some absurd results. For example, an imported article composed of beads 34 per cent in value, cotton 33 per cent, and spangles 33 per cent in value, would be dutiable under paragraph 333 at 50 per cent ad valorem. But if the article be composed of 33 per cent of beads, 33 per cent of spangles, and 34 per cent of cotton in value, it would, under the Government's contention, be dutiable at only 30 per cent ad valorem as an article composed in chief value of cotton.

We do not think that a construction of the paragraph which would lead to such a result would carry out the intention of Congress. In our opinion it was intended that paragraph 333 should cover articles composed wholly or in chief value of beads or of spangles, or of a combination of those materials.

In this view of the case it is unnecessary to discuss the suggestion of the Assistant Attorney General that the rule of construction imposed by paragraph 386 of the tariff act that "the words 'component material of chief value,' wherever used in this section, shall be held to mean that component material which shall exceed in value any other single component material of the article," further than to say that we find nothing in this provision which requires that paragraph 333 should be so construed that the beads and spangles are to be treated as separate component materials.

The trimmings in this case, which, as we have stated, are neither embroidered nor appliquéd, are composed in chief value of beads and spangles, and the claim in the protests that they are dutiable at 50 per cent ad valorem under paragraph 333 is sustained.

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Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 2, JANUARY 31, 1916.

No. 39190.—Protest 774937 of P. C. Kuyper & Co. (New York).

STEEL SHAPES CONTAINING NICKEL AS AN ALLOY.—Stamped steel articles used in the construction of automobile frames, classified at 15 per cent ad valorem under paragraph 110, tariff act of 1913, as pressed shapes of steel containing nickel as an alloy are claimed dutiable under paragraph 104.

Opinion by FISCHER, G. A. The articles were found to be of the same character as those passed upon in Abstract 33645 (T. D. 33763), which was affirmed in Kuyper *v.* United States (5 Ct. Cust. Appls., 175; T. D. 34253). Protest overruled.

No. 39191.—Protest 776301 of J. A. Henckels (New York).

BLADES FOR POCKETKNIVES.—The appraiser reported the merchandise to be blades for pocketknives. They were classified at 55 per cent ad valorem under paragraph 128, tariff act of 1913, and are claimed dutiable at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. Single blades for pocketknives, imported unaccompanied by the necessary handles, were held not to be classifiable under paragraph 128, but relegated to the general provision for manufactures of metal not specially provided for, under paragraph 167. Protest sustained. G. A. 7815 (T. D. 35897) followed.

No. 39192.—Protests 781513-6064, etc., of Bemis Bros. Bag Co. (New Orleans).

JUTE BAGS.—Old secondhand jute bags, classified as manufactures of vegetable fiber at 35 per cent ad valorem under paragraph 284, tariff act of 1913, are claimed dutiable at 10 per cent under paragraph 281.

Opinion by COOPER, G. A. On the authority of G. A. 7705 (T. D. 35268) and Abstract 38362 the bags in question were held dutiable at 10 per cent under paragraph 281.

No. 39193.—Protest 763152 of Snow's United States Sample Express Co. (New York).

FIGURED COTTON CLOTH.—Figured cotton cloth classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at 10 per cent under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501), the cotton cloth in question was held dutiable as woven figured under paragraph 252.

No. 39194.—Protests 756578, etc., of H. B. Claflin Co. et al. (New York).

COTTON TOWELS—COTTON QUILTS—FIGURED COTTON CLOTH.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at 25 per cent as cotton towels and quilts under paragraph 264 and at the appropriate rate as figured cotton cloth under paragraph 252.

Opinion by COOPER, G. A. The towels and quilts were held dutiable at 25 per cent under paragraph 264, as claimed. G. A. 7748 (T. D. 35577) followed. On the authority of United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501), affirming G. A. 7618 (T. D. 34858), figured cotton cloth was held dutiable under paragraph 252.

No. 39195.—Protests 761483, etc., of Al. Hermann Co. et al. (New York).

COTTON TABLE DAMASK—BLANKETS—TOWELS—FIGURED COTTON CLOTH.—Merchandise classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913,

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as Jacquard figured manufactures of cotton, is claimed dutiable as follows: (1) Cotton table damask in the piece, damask doilies, damask table covers, and damask napkins, at 25 per cent under paragraph 263; (2) cotton blankets, towels, and bath mats, at 25 per cent under paragraph 264; and (3) figured cotton cloth at the appropriate rate under paragraph 252.

Opinion by COOPER, G. A. Protests sustained on the authority of G. A. 7630 (T. D. 34903), G. A. 7748 (T. D. 35577), and United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501).

BEFORE BOARD 3, JANUARY 31, 1916.

No. 39196.—Protests 737030, etc., of Maltus & Ware et al. (New York and Boston).

ORCHID PLANTS—MOTHER BULBS.—The question here is whether orchid plants are dutiable at 25 per cent ad valorem under paragraph 210, tariff act of 1913, or entitled to free entry as mother bulbs under that provision of the same paragraph.

Opinion by WAITE, G. A. On the authority of Maltus *v.* United States (6 Ct. Cust. Appls.,—; T. D. 35920) the orchid plants in question were held entitled to free entry as mother bulbs under paragraph 210.

No. 39197.—Protests 774939, etc., of Macy & Dunham et al. (New York).

COLA NUTS.—Cola nuts classified as nuts of all kinds under paragraph 226, tariff act of 1913, are claimed to be free of duty under paragraph 477 or 557.

Opinion by WAITE, G. A. The cola nuts in question were held properly classified under paragraph 226. Abstract 38466 followed.

No. 39198.—Protests 780727-54486, etc., of Sing Lung & Co. et al. (Chicago).

DUCKS' EGGS.—Ducks' eggs classified as prepared eggs under paragraph 203, tariff act of 1913, are claimed free of duty as eggs of poultry under paragraph 478.

Opinion by WAITE, G. A. The eggs in question were found to be of the same character as those held in Abstract 37344 to be free of duty under paragraph 478. Protests sustained.

No. 39199.—Protest 779843 of H. F. Behrens (New York).

LEGALITY OF REAPPRAISEMENT.—It is claimed here that the value upon which duty was assessed is based upon illegal appraisement and reappraisement.

Opinion by WAITE, G. A. Protest unsupported; overruled.

No. 39200.—Protest 792458 of Batjer & Co. (New York).

GRENADINE SIRUP—SUFFICIENCY OF PROTEST.—Grenadine sirup classified as fruit sirup under paragraph 247, tariff act of 1913, is claimed to be dutiable as a nonenumerated article at 15 per cent under paragraph 386.

Opinion by WAITE, G. A. The mistake in citing paragraph 386 instead of paragraph 385 was held not to invalidate the protest. The sirup in question was held dutiable as a nonenumerated article at 15 per cent under paragraph 385. United States *v.* Wakem (6 Ct. Cust. Appls., —; T. D. 35923) followed.

No. 39201.—Protest 794206 of R. H. Macy & Co. (New York).

GRENADINE.—Grenadine classified at 70 cents per gallon under paragraph 247, tariff act of 1913, is claimed dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385.

Opinion by WAITE, G. A. Upon stipulation of counsel the grenadine in question was held dutiable under paragraph 385. United States *v.* Wakem (6 Ct. Cust. Appls., —; T. D. 35923) followed.

No. 39202.—Protests 784946, etc., of Cusenier Co. et al. (New York).

GRENADINE.—Merchandise invoiced as "grenadine" or "sirop de grenadine," classified as a fruit sirup under paragraph 247, tariff act of 1913, is claimed dutiable under paragraph 385.

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Opinion by WAITE, G. A. Upon stipulation of counsel the merchandise in question was held dutiable under paragraph 385, as claimed. United States *v.* Wakem (6 Ct. Cust. Appls., —; T. D. 35923) followed.

No. 39203.—Protest 782260 of Glanzer Bros., and protests 787589, etc., of J. A. Kirsch & Co. et al. (New York).

DRY BEANS IN TINS.—Dry beans from Italy, some known as Cannelline beans, imported in large tins, classified at 1 cent per pound under paragraph 199, tariff act of 1913, are claimed dutiable at 25 cents per bushel under paragraph 197.

Opinions by WAITE, G. A. Upon the authority of G. A. 7836 (T. D. 36034) the beans in question were held dutiable under paragraph 197, as claimed.

BEFORE BOARD 1, FEBRUARY 2, 1916.

No. 39204.—Protest 769289 of J. R. Hopkins (St. Louis).

GRASS FURNITURE.—Merchandise classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable as furniture in chief value of wood at 15 per cent under paragraph 176.

Opinion by MCCLELLAND, G. A. The presumption of the correctness of the collector's action was not overcome. Protest overruled.

No. 39205.—Protests 767309, etc., of Cowen, Heineberg Co. (San Francisco).

GRASS MANUFACTURES.—Grass in braided form, classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable as sea grass, manufactured, at 10 per cent under paragraph 372.

It was found that the grass after being gathered and dried is braided and ready for use as imported. Protests overruled.

MCCLELLAND, *General Appraiser:* * * * The paragraph under which duty was assessed of course contemplates only articles made of grass or such processes applied to the grass as to give it a distinctive name and fit it for a use for which the grass in its original condition would not be fitted. Paragraph 372 provides only for sea grass manufactured or dyed. Sea grass thus treated still retains its identity as grass, although not in its natural condition. We are satisfied that grass braided in the form represented by the exhibit precludes the possibility of the merchandise being known as sea grass, having been deliberately braided and thus prepared for specific use. Tide Water Oil Co. *v.* United States (171 U. S., 216); United States *v.* Dudley 174 U. S., 670); United States *v.* Richter (2 Ct. Cust. Appls., 167; T. D. 31680); United States *v.* Meier (136 Fed., 764; T. D. 25973). * * *

No. 39206.—Protests 767163, etc., of Peck & Hills Furniture Co. (Los Angeles), and protest 785634 of J. T. Steeb & Co. (Seattle).

MANUFACTURES OF GRASS.—Merchandise classified as manufactures of grass and manufactures of straw under paragraph 368, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 176 or 385 or at 2½ cents per square yard under paragraph 272.

Opinions by MCCLELLAND, G. A. Protests unsupported; overruled.

No. 39207.—Protest 599160 of Knauth, Nachod & Kuhne (New York).

JEWELRY.—Merchandise classified at 85 per cent ad valorem under paragraph 448, tariff act of 1909, is claimed dutiable at 60 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the merchandise in question was found to be commonly known as jewelry and held dutiable at 60 per cent under paragraph 448. United States *v.* International Forwarding Co. (6 Ct. Cust. Appls., —; T. D. 35272) followed.

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No. 39208.—Protest 594890 of B. Altman & Co. (New York).

ELASTIC BELTS WITH METAL BUCKLES.—The appraiser reports that the merchandise consists of ladies' elastic belts composed of tinsel, cotton, and india rubber, with buckles of brass or white metal, plated and set with imitation precious stones; the buckles valued at over 20 cents per dozen and of more value than the belts themselves. They were classified at 85 per cent ad valorem under paragraph 448, tariff act of 1913, and are claimed dutiable as manufactures of metal at 45 per cent under paragraph 199.

Opinion by SULLIVAN, G. A. On the authority of Abstract 26552 (T. D. 31866) and United States *v.* Altman (6 Ct. Cust. Appls., —; T. D. 35390), the belts in question were held properly classified under paragraph 448. G. A. 7097 (T. D. 30929) cited.

No. 39209.—Protest 779094 of the Emporium (San Francisco).

POCKET PENCILS.—Pocket pencils composed of metal or of metal and celluloid, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 378 as pencils of paper or wood or other material not metal.

Opinion by SULLIVAN, G. A. Pencils found to be in chief value of celluloid were held dutiable at 25 per cent under paragraph 378. Protest sustained in part.

No. 39210.—Protest 767313 of the Emporium (San Francisco).

IMITATION PEARL BEADS.—Imitation pearl beads, graduated and strung on two tough mercerized-cotton threads, and similar strings of imitation pearl beads of uniform size, not graduated but nicely matched in color, classified at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable under the same paragraph as beads loosely strung at 35 per cent.

Opinion by SULLIVAN, G. A. The merchandise in question was found to be unfinished imitation pearl necklaces, properly classifiable under paragraph 356. Abstract 36489 (T. D. 34774) and Cohn *v.* United States (4 Ct. Cust Appls., 378; T. D. 33536) cited. Protest overruled.

No. 39211.—Protest 762065 of Adolph Strauss & Co. (New York).

MIRRORS—TOYS.—Merchandise classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, is claimed dutiable as mirrors at 30 per cent ad valorem under paragraph 95.

Opinion by SULLIVAN, G. A. The articles in question, found to be small, round mirrors having ball puzzles on the back, and mirrors curved to cause the object reflected to assume a distorted shape, were held properly classified as toys under paragraph 342. Abstract 37755, Abstract 29441 (T. D. 32751), Abstract 26962 (T. D. 31971), and Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) cited.

No. 39212.—Protest 755692 of Theo. Rose (New York).

STAINED GLASS WINDOWS.—Stained glass windows imported for presentation to a church, classified at 30 per cent ad valorem under paragraph 95, tariff act of 1913, are claimed to be free of duty under paragraph 655. Free entry was refused for the reason that the church is not incorporated.

Opinion by SULLIVAN, G. A. On the authority of Perry *v.* United States (6 Ct. Cust. Appls., —; T. D. 35462), the windows in question were held entitled to free entry under paragraph 655.

BEFORE BOARD 3, FEBRUARY 2, 1916.

No. 39213.—Protest 780542 of R. J. Godwin's Sons (New York).

WEIGHT OF EMERALDS—SHORTAGE.—A shortage is claimed in this case in the weight of two emeralds.

Opinion by WAITE, G. A. The emeralds in question were invoiced as weighing 2.72 carats, on which weight they were assessed for duty. It is claimed that they weighed only 1.72 carats. The proof was found not to be convincing. Protest overruled.

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No. 89214.—Protest 786248 of P. C. Kuyper & Co. (New York).

GLADIOLUS BULBS—MOTHER FLOWERING BULBS.—Gladiolus bulbs classified at 50 cents per thousand are claimed free of duty under paragraph 210, tariff act of 1913, as mother flowering bulbs.

Opinion by WAITE, G. A. It was found that the bulbs in question are mature mother flowering bulbs imported exclusively for propagating purposes. They were held entitled to free entry under paragraph 210.

No. 89215. Protest 784476 of Rusch & Co. (New York).

SHORTAGE OF COTTON CLOTH.—In this case a shortage of cotton cloth is claimed.

Opinion by WAITE, G. A. The shortage in question was discovered on opening the case after removal to the store of the importers. Protest overruled.

No. 89216. Protest 770302 of J. W. Hampton, jr., & Co. (New York).

MOLYBDENITE.—Molybdenite classified under paragraph 81, tariff act of 1913, is claimed free of duty under paragraph 549.

Opinion by HAY, G. A. Upon stipulation of counsel that the merchandise is of the same character and degree of manufacture as that passed upon in Hampton *v.* United States (6 Ct. Cust. Appls., —; T. D. 35926), protest sustained claiming free entry under paragraph 549.

No. 89217.—Protest 794270 of Seiz Bros. (New York.)

REGALIA—REGULATIONS.—Merchandise classified as wearing apparel under paragraph 358, tariff act of 1913, is claimed free of duty as regalia under paragraph 611.

Opinion by HAY, G. A. The record not disclosing that the regulations have been complied with, protest overruled.

No. 89218.—Protest 793781 of Davies, Turner & Co. (New York).

CLERICAL ERROR.—A case of musical instruments was appraised at a value greater than that declared in the entry. Upon reappraisement the appraised value was affirmed and additional duty was collected under paragraph I of section 3, tariff act of 1913. A manifest clerical error is claimed.

Opinion by HAY, G. A. Upon examination of the papers no clerical error was apparent. Protest overruled.

No. 89219.—Protest 791494 of S. Stern (New York).

CLERICAL ERROR.—It is claimed in this case that, through clerical error, certain dutiable items were not added to the entered value.

Opinion by HAY, G. A. Protest overruled. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), and United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485) cited.

No. 89220.—Protest 790502 of Thos. Kenworthy's Sons (Philadelphia).

PROTEST TOO LATE.—The entry in question was liquidated May 22, 1915. This protest was filed on June 24, 1915.

Opinion by HAY, G. A. Protest too late; dismissed.

(T. D. 36142.)

Granito—Construction of statute.

JACKSON & CO. *v.* UNITED STATES (No. 1585).

1. GRANITO—HOW DUTIABLE.

Granito, a manufacture of marble waste, crushed and screened, is dutiable under paragraph 81, tariff act of 1913, as an article composed of earthy or mineral substance, not specially provided for.

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2. ROSSMAN *v.* UNITED STATES (1 CT. CUST. APPLS., 280; T. D. 31321) DISTINGUISHED.

This case was based upon the tariff law of 1897, in which the provision relating to articles composed of earthy or mineral substances was restricted by the phrase "whether decorated or not"; and this phrase had been held to exclude from the operation of the paragraph articles not susceptible of decoration.

United States Court of Customs Appeals, January 28, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7714 (T. D. 35331).

[Affirmed.]

Walden & Webster (*Henry J. Webster* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise here involved is granito, which is a manufacture of marble waste, crushed and screened, and was held, in the case of Rossman *v.* United States (1 Ct. Cust. Appls., 280; T. D. 31321), to be dutiable as a manufactured article. The present importation was made under the tariff act of 1913, and was assessed for duty at 20 per cent ad valorem under paragraph 81, and is claimed to be dutiable at 15 per cent ad valorem as an unenumerated manufactured article under paragraph 385.

The importers put forth two contentions: First, that the article granito was under the tariff act of 1909 held by the Board of General Appraisers to be dutiable as a nonenumerated manufactured article, and that the presumption arises that the Congress adopted this construction in enacting the law of 1913; and, secondly, that under the rule of *ejusdem generis* the article in question should be excluded from the provision in paragraph 81 for articles composed of earthy or mineral substances.

As to the first proposition, it appears that in a number of decisions the board held this article dutiable as a nonenumerated manufactured article under the law of 1909. The cases in which this was held were abstract decisions, consisting in effect of holdings that the question was ruled by the Rossman case, *supra*, that case, however, being based upon the tariff law of 1897, in which the provision relating to articles composed of earthy or mineral substances was restricted by by the clause "whether decorated or not," and which term had been held to exclude therefrom articles which are not susceptible of decoration. The Rossman case was therefore no authority for holding articles such as granito excluded from the paragraph for articles composed of earthy or mineral substances when these limiting words relating to decoration were eliminated from the paragraph. The principle of the Rossman case was misapplied in the abstract decisions. The contest, however, over the single article of granito was apparently not continued by the department under the act of 1909.

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But before we conclude that the Congress adopted the construction which the board gave the provision of 1909 in enacting the present law, we should take into account the fact that as to articles composed of earthy or mineral substances the effect of the change in the paragraph was fully noted. In T. D. 30708 the board had under consideration barometer tubes and other articles composed of fused silica, which had previously been held subject to a duty of 20 per cent under the tariff act of 1897 as unenumerated manufactured articles. Following the case of Dingelstedt *v.* United States (91 Fed., 112), on the ground that said articles were not susceptible of decoration, the board held them to be dutiable under the act of 1909 as articles composed of earthy or mineral substances.

This court, in United States *v.* General Electric Co. (4 Ct. Cust. Appls., 287; T. D. 33494), in dealing with articles composed of precious stones, held that they were dutiable under paragraph 95 of the tariff act of 1909, and in United States *v.* Tamm (2 Ct. Cust. Appls., 425; T. D. 32173), it was held that flint glazing stones were dutiable as articles composed wholly or in chief value of earthy or mineral substances, and in United States *v.* Fensterer (2 Ct. Cust. Appls., 368; T. D. 32094), the effect of the modification of paragraph 95 was fully discussed and the same article which had previously been held in United States *v.* Fensterer (1 Ct. Cust. Appls., 93; T. D. 31110) to be dutiable as a nonenumerated manufactured article, was held, in view of the modification by the act of 1909, to fall within the terms of "an article composed wholly or in chief value of earthy or mineral substances."

In view of this history of the provision of the act of 1909, it can not be said that Congress intended to adopt a construction which would exclude the product in question from the terms of the provision for earthy or mineral substances, unless we assume that it was the purpose to discriminate between articles which had like characteristics by excluding articles fully answering the description of manufactured articles composed of earthy or mineral substances in one case and including them within the definition in another. This would lead to extraordinary results and tend to confusion in the administration of the law and is not a purpose to be imputed to Congress.

The importer makes the further contention that this article does not fall within paragraph 81 for the reason that it is not *ejusdem generis* with the article in which it is in closer relation, and urges that a reading of Schedule B leads to the conclusion that paragraphs 81 and 82 relating to earth, clays, and closely related substances and manufactures thereof are intended to stand by themselves and to exhaust the kind of earthy or mineral substances which are referred to in general terms in paragraph 81. Paragraphs 83 to 96, inclusive,

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are said to relate to glass and the manufactures thereof, and paragraphs 97 to 101 to relate to marble and stone.

This contention might have been made with equal force under the act of 1909, as it related to the subject involved in United States *v.* Foscato (6 Ct. Cust. Appls., —; T. D. 35251). The grouping in that case would be just as conclusive evidence of an intention to restrict and limit the term earthy or mineral substances to what had preceded it, as is the grouping under the act of 1913.

The case chiefly relied upon in the brief of counsel is the case of Dingelstedt *v.* United States, *supra.* In that case it was said of the earlier paragraphs of the act of 1894:

> This collocation * * * would seem to indicate most strongly that the phrase "all articles composed of * * * mineral substances" was not used in its broadest sense, but restricted to articles composed of mineral substances similar to those enumerated in the schedule, if not in the subdivision. Strong confirmation of the correctness of this interpretation is found in the circumstance that Congress provides in the paragraph different rates of duty for the "articles" referred to when decorated, and, when not decorated, apparently they had in mind articles susceptible of decoration; and in the further circumstance that Congress has inserted in the paragraph the words "including lava tips for burners." If the phrase relied on were to be given the broad construction contended for, it would be wholly unnecessary to provide specially for lava tips; they would be included in the general phrase. Evidently Congress understood that this general phrase was used by it in such a restricted sense that it would not cover the lava tips, and therefore they were specially provided for. Construed as above indicated, the paragraph would not cover the carbons now before the court.

As we interpret this decision, the application of the rule of *ejusdem generis* was not rested upon the collocation of the various paragraphs alone, but was taken as a circumstance which, when considered in connection with the provision for articles whether decorated or not, restricted it to such as were susceptible of decoration, and that this narrowed the meaning of the phrase "articles composed of earthy or mineral substances."

A somewhat similar contention to that here made was urged in the case of United States *v.* General Electric Co., *supra.* In that case it was contended that the importation, while falling within the specific terms of paragraph 95, as articles composed of earthy or mineral substances, should have been excluded therefrom on the doctrine of *ejusdem generis* as limiting the phrase to articles of a like character as those named in the preceding paragraph of Schedule B. After a discussion of the case of Dingelstedt *v.* United States, and after directing attention to the fact that that case arose under the act of 1894, it was said of the case:

> So far as it rested upon the rule of *ejusdem generis*, its force is much weakened by the fact that Congress, in the act of 1897, paragraph 115, provided in the same Schedule B for manufactures of agate, alabaster, chalcedony, chrysolite, coral, cornelian, garnet, jasper, jet, malachite, marble, onyx, and a number of other articles not embraced in Schedule B of the act of 1894, but as unrelated to the articles embraced in such prior act as are the articles involved in this suit.

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And again in paragraph 112 of the present act, Congress, instead of enumerating all the articles above mentioned in paragraph 115, provided for "all articles composed wholly or in chief value of agate, rock crystal, or other semiprecious stones, except such as are cut into shapes and forms fitting them expressly for use in the construction of jewelry."

This departure from the language of the act of 1894, including as it does in the enumerated articles a long list of articles similar in use to sapphire, would seem to demonstrate that it was not the purpose to limit or restrict the paragraph in question to articles of inferior value, and that the rule of *ejusdem generis* is not to be given application.

So, we think that the act of 1913 employs this phrase in its ordinary sense, and that any article not specially provided for in the section which is composed of earthy or mineral substances is dutiable under paragraph 81.

We have not discussed the effect of the provision in the first part of paragraph 81 for earthy or mineral substances wholly or in part manufactured, for the reason that both counsel agree that the substance in question is a manufactured article. This concession accords with the ruling of this court in United States *v.* Foscato, *supra.*

The decision of the board sustaining the assessment is *affirmed.*

(T. D. 36143.)

Additional duty—Antimony.

SHELDON & CO. *v.* UNITED STATES (No. 1593).

1. RETROACTIVE LEGISLATION.

A legislative purpose to give retroactive effect to a law imposing a burden based upon an act or admission not when committed subject to a penalty will not be imputed to Congress except upon a clear expression of such intention. (Citing I Cooley on Taxation, 494,495.) Whether such legislation would be within the constitutional inhibition of ex post facto legislation, *quere.* (Citing Burgess *v.* Salmon, 97 U. S., 381.)

2. CONSTRUCTION—STATUTE NOT RETROACTIVE.

Antimony was entered under the law of 1909, which made it dutiable specifically; and withdrawn under the law of 1913, which makes it dutiable ad valorem. Its appraised exceeded its declared value. The law of 1913 will not be given a retroactive effect, so as to make it subject to the additional duty imposed by paragraph 1 of section 3, upon merchandise dutiable ad valorem when the appraised exceeds the declared value.

United States Court of Customs Appeals, January 28, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38226.

[Reversed.]

Walter Evans Hampton for appellants.

Bert Hanson, Assistant Attorney General (*John R. Rafter*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The material facts in the case are that the appellants imported certain antimony metal which was entered for warehouse during

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the life of the tariff act of 1909. That act, by paragraph 173, provided a specific duty for antimony at the rate of 1½ cents per pound. Upon the making of the warehouse entry, the merchandise was appraised by the local appraiser at a value of 20 per cent higher than the value declared in the entry. The importers were notified of the advance, but no appeal to reappraisement was taken. Thereafter, and prior to the passage of the present act, the entry was liquidated at the specific rate provided, without additional duty, the permit of delivery was issued, and the merchandise was withdrawn from warehouse after the present act became effective. The collector thereupon reliquidated the entry, assessing duty at the rate of 10 per cent ad valorem under paragraph 144 of the act, and an additional duty based upon paragraph I of section 3, because the appraised value exceeded the entered value. The importers protested against the assessment of additional duty, and upon a hearing before the Board of General Appraisers the assessment of duty by the collector was affirmed.

It will be seen that the question presented is one of law, that is, whether or not this additional duty was properly assessed on merchandise imported and entered for warehouse under the act of 1909 when subject to a specific rate of duty, but which was not withdrawn for consumption until the act of 1913, imposing an ad valorem rate of duty, became effective, such merchandise having been appraised at the time of entry for warehouse at a value in excess of the entered value.

The act in force at the time this entry was made, subsection 7 of section 28 of the act of 1909, provides:

* * * If the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry there shall be levied, collected and paid, in addition to the duties *imposed by law* on such merchandise, an *additional duty* of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry: *Provided*, That the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value.

In this case no fraud is averred or suggested, and indeed it would be difficult to conceive how an undervaluation upon entry of specific goods could under this act have worked a fraud. Assuming the act to have contemplated an appraisal of specific goods, which is not an unreasonable construction of the act, the question of the duty resting upon the importer with reference thereto becomes one of first importance. It is of course made his duty at the time of entry to state the value of the goods as he conceives it to be This he did, and no

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fraud is suggested, as before stated. Thereupon an appraisement is had by the appraiser, and the value stated in the entry is advanced. Notice of this is brought home to the importer, and no appeal to reappraisement is had. But the question suggests itself, why should he appeal to reappraisement? Not only is the value of the goods not in terms made the basis for assessment, but in the express language of the act the additional duty which is imposed in certain cases is not to be imposed where, as in this case, the advance in value by appraisement does not add to the duties imposed. It would be idle for him to take an appeal to reappraisement. He has done all that the statute requires in entering the goods at the value as he conceived it to be.

It is hardly to be conceived that the provision for this additional duty was intended to have relation to future enactments. The law was complete in itself and it must be assumed that when this so-called additional duty which, while declared not to be a penalty, resulted in a very large increase in the duties imposed, was provided, the provision had relation to the neglect of a duty by the importer at the time of the entry, and that to justify the imposition of the additional duty there must have been dereliction or act of the importer which affected at the time the amount of duty which the Government was entitled to exact.

That the effect of subsection 7 above quoted was to provide an imposition for the *act* of undervaluation is clear. In the case of Helwig *v.* United States (188 U. S., 605), the question presented was whether, under section 7 of the act of 1890, to which subsection 7 of section 28 of the act of 1909 is successive, the additional sum imposed was a penalty. It was said *inter alia:*

> Without other reference than to the language of the statute itself, we should conclude that the sum imposed therein was a penalty. It is not imposed upon the importation of all goods, but only upon the importer in certain cases which are stated in the statute, and it is clear that the sum is not imposed for any purpose of revenue, but is in addition to the duties imposed upon the particular article imported, and in each individual case when the sum is imposed it is based upon the particular act of the importer. That particular act is his undervaluation of the goods imported, and it is without doubt a punishment upon the importer on account of it. * * *
>
> Although the statute, under section 7, *supra*, terms the money demanded as "a further sum," and does not describe it as a penalty, still the use of those words does not change the nature and character of the enactment. Congress may enact that such a provision shall not be considered as a penalty or in the nature of one, with reference to the further action of the officers of the Government, or with reference to its effect upon the individual, and it is the duty of the court to be governed by such statutory direction, but the intrinsic nature of the provision remains, and, in the absence of any declaration by Congress affecting the manner in which the provision shall be treated, courts must decide the matter in accordance with their views of the nature of the act.

So, under the present law the imposition, whether it be called a tax or additional duty, and even though it may not be called or

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construed to be a penalty, is nevertheless based upon an act of the importer and is not an imposition based upon the value, character, or status of the merchandise imported.

Whether a law retrospectively imposing a so-called duty upon such an act previously concluded is subject to impeachment as an ex post facto law, in contravention of the Constitution, it is not necessary to decide. But as to this question, see Burgess *v.* Salmon (97 U. S., 381). Assuming such legislation to be wholly within the competence of Congress, an act which is claimed to work such results is certainly subject to the rule established by abundant authority that legislation of this character, or even legislation claimed to impose a tax in the most proper or most commonly accepted meaning of that term, is not to be held to act retrospectively unless the intent to give it that effect is clearly expressed. (1 Cooley on Taxation, 494–5, and cases cited in note 1 on page 495.)

The present asserted imposition is not *a priori* a tax. It can only be made such by the legislative declaration that it is to be so called, and the purpose to relate such provision to a preexisting state of facts based upon a concluded act is not to be imputed to Congress in the absence of the clearest declaration of such intention. We do not find such purpose thus clearly expressed in the act of 1913. If that purpose is manifested anywhere, it is in paragraph Q of subsection 2 of section 4, which in part reads as follows:

> That on and after the day when this act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to the *duties imposed by this act*, and to no other duty, upon the entry or the withdrawal thereof.

What is meant by the term "duty imposed by this act?" It is contended by the importers that it means the rate of duty imposed by the statute. The counsel for Government contends that it means all the duties imposed by the act, including the additional duties claimed in this case. When the terms of the act of 1909 and 1913 are construed together, the contention of the Government can not be sustained. The assurance that the additional duties shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value appearing in the act of 1909 had reference to the act of undervaluation as it affected the dutiable status of the importation at that time, and the *law* referred to is most obviously the law in force when the entry was made. When the whole transaction relating to the entry and advance on appraisement was closed, the importer was by express declaration of the law declared not to be subject to any additional duty. Not only is this true, but the policy

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of the act of 1909 is continued in the present act, for in the act of 1913 the same assurance is given by paragraph I of section 3, which reenacts the proviso above quoted. This proviso appearing in the act of 1913 is to be construed in connection with the other terms of the act imposing the duty of making entry thereunder and has relation to the act of entry and restricts the provision for added duty by making it applicable to the case of an entry where the undervaluation and subsequent increase resulted in increasing the amount of duty to which the goods were subjected by *law*. This clearly imports the law in force when such undervaluation occurs and the transaction is concluded by the appraisement.

We are not called upon to decide whether additional duties actually accrued under the act of 1909 fall within the provision of paragraph Q of subsection 2 of section 4 of the act of 1913. That is not this case. This was an attempt to impose a so-called duty charge upon the importers for an act not provided for by the act of 1909 and likewise not subject to such imposition under the act of 1913, but for an act concluded prior to its enactment. This we think was not intended by paragraph Q.

The decision of the Board of General Appraisers sustaining the contention of the Government is *reversed*.

(T. D. 36144.)

Iron drums containing sulphide of sodium.

UNITED STATES *v.* GEISENHEIMER & CO. (NO. 1597).

CONTAINERS OF "GAS, LIQUIDS, OR OTHER MATERIAL"—DAMAGE AFTER IMPORTATION.

Strong sheet iron drums containing sulphide of sodium, which, when in proper condition, will admit of their contents being removed without destroying them or their usefulness as containers, are dutiable under paragraph 127, tariff act of 1913, as "* * * cylindrical or tubular tanks or vessels, for holding gas, liquids, or other material;" and this tariff status is not affected by their having, since importation, become damaged so that the removal of their contents necessitates their destruction.—United States *v.* Garramone (2 Ct. Cust. Appls., 30; T. D. 31577) and United States *v.* Braun Chemical Co. (2 Ct. Cust. Appls., 57; T. D. 31596) distinguished.

United States Court of Customs Appeals, January 28, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38228.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Allan R. Brown for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

In addition to the duty imposed on sulphide of sodium imported at the port of Philadelphia, the collector of customs subjected the

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metal drums containing the chemical to a duty of 20 per cent ad valorem under that part of paragraph 127 of the tariff act of 1913, which reads as follows:

127. * * * Cylindrical or tubular tanks or vessels, for holding gas, liquids, or other material, whether full or empty, * * * 20 per centum ad valorem.

The importers made no objection to the duty imposed upon the sulphide of sodium, but protested that the metal drums were free of duty inasmuch as they were the usual containers of merchandise subject to a specific and not to an ad valorem rate of duty.

On the evidence adduced at the hearing the board found that the metal drums were the containers in which sulphide of sodium was usually imported and that it was necessary to cut out the heads of the drums in order to remove the contents, thereby rendering them unfit for further use as containers. The board having found that the containers were of that character apparently concluded that they were of the same class as those considered by this court in United States *v.* Garramone (2 Ct. Cust. Appls., 30; T. D. 31577) and United States *v.* Braun Chemical Co. (2 Ct. Cust. Appls., 57; T. D. 31596), and therefore sustained the protest of the importers. The Government appealed.

The containers passed upon in United States *v.* Garramone were ordinary tin cans containing tomatoes and tomato sauce. This court found that once the contents were removed from the tin cans they were unfitted for further use as containers and were in effect rubbish; that they had no appreciable value; that they did not enter into or become a part of the trade or commerce of the country or compete with articles manufactured here; that their value was not considered in commercial transactions; and that they were not the cylindrical or tubular tanks or vessels provided for by paragraph 151 of the tariff act of 1909. In United States *v.* Braun Chemical Co., the court had under consideration cylindrical iron drums which were brought into the country as containers of chloride of magnesium. In that case it was shown by the evidence that the chloride of magnesium was heated and poured into the drums and permitted to solidify. That method of filling the drums, and the fact that the drums would fall apart if sufficient heat were applied to permit of the pouring out of the contents, made it necessary to cut the drums in two in order to remove the chloride of magnesium. Apparently, therefore, the drums were not of very substantial construction and the court found that their usefulness as containers ended with the withdrawal of their contents and that thereafter it did not appear that they were devoted to any useful purpose or that they were adapted thereto or that they had any value.

The evidence submitted to us by the record on this appeal does not warrant us in saying that the drums under discussion are of the kind

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considered in either of the cases just mentioned. According to the testimony, the drums here involved are made of sheet iron and are about 3 feet high by 18 inches "wide" (in diameter?). They weigh, when filled with sulphide of sodium, about 500 pounds, and from that fact and the material employed in their construction we think it may be fairly deduced that they are strongly built and durable in character. It is apparent from the testimony that there is nothing in the make-up of the drums themselves or in their relation to the goods contained by them which necessarily requires their destruction in order to secure the contents or necessarily precludes their further use as containers.

William Stopper, United States sampler of general merchandise, testified on the part of the Government that the invoices covering the sulphide of sodium imported in the drums now in controversy were referred to him for the purpose of taking samples. He stated that in the performance of his official duties he took samples of the importation and saw all of the drums covered by the invoices. He said that in the head of the drums there was a plate held in place by turnbuckles which could be removed by turning the turnbuckles three-quarters way round. He positively declared that he took samples of the goods by removing the plates from 14 of the drums, and that after taking the samples he returned the plates to place without destroying them or the drums in any way. The testimony of the Government witness that the drums could be opened without damage either to the drum or the head was contradicted by one witness, H. Carrol Brooke, vice president of the Nicetown Dye Works, to which establishment it appears part of the importation was sold. Brooke said that the lids of the drums sold to his company were put on by a machine and clamped down or "doubled over and clamped down," and that the sulphide of sodium could not be removed without cutting out the lids and destroying the containers. Mr. Brooke's testimony, however, is at variance with that of Robert B. Ely, Philadelphia manager of the importers, and George H. Undy, a salesman in the employ of the importers. These two witnesses testified that the head of the drum was closed by a lid about 5 or 6 inches across, which was pressed into the top, and that unless rusted the lid could be removed without destroying the drums. Ely testified that the drums containing the sulphide of sodium sold to the Nicetown Dye Works were so crushed and rusted that the contents could not be removed until the heads had been cut out with a hammer and chisel, and that this manner of opening the drums resulted in destroying the head and thereby rendered impossible the further use of such drums as containers. Brooke stated that these same drums after opening were thrown on the ash heap, but that "you could put anything in them that you would choose to." No testimony was

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adduced showing when the drums had been crushed or become rusted, and from all that appears in the record such crushing and rusting may have occurred subsequent to importation. It appeared from the testimony of Brooke that drums with removable heads were salable and that an allowance was made to the purchaser with return of the drums to the seller.

With this as the state of the record, we think it is established by a clear preponderance of the evidence that the drums in question are of durable construction; that neither the nature of their construction nor their relation to the merchandise contained by them requires their destruction in order to remove the contents; that unless the drums have been rusted or crushed it is not necessary to cut them open; and that, barring injury resulting from accident or mischance, they are available for repeated use as containers and have a merchantable value as such. It is evident that drums of that kind can not be classed with the tin cans involved in the case of United States *v.* Garramone, nor with the iron drums passed upon in the case of United States *v.* Braun Chemical Co., from which the contents could not be removed except by cutting the drums in two.

In our opinion the finding of fact upon which the board based its ruling sustaining the protest was against the evidence, and we must therefore hold that the drums are cylindrical or tubular tanks or vessels, dutiable under paragraph 127 of the tariff act of 1913, as assessed by the collector.

Whether paragraph 127 can be applied to metal drums which *prior to importation* have been so crushed, rusted, or otherwise damaged as to render them commercially unfit for further use as containers is not in issue in this case and is therefore not decided.

The decision of the Board of General Appraisers is *reversed*.

(T. D. 36145.)

Iron drums.

UNITED STATES *v.* BENE *et al.* (No. 1598).

1. CONTAINERS OF "GAS, LIQUIDS, OR OTHER MATERIAL."

Strong sheet-iron drums, containing binoxide of barium, some barrel-shaped and some tubular, the barrel-shaped ones having in the head an opening closed by a readily removable and replaceable lid, and the tubular, one closed by a cork and sealed by a tin cap the removal of which does not injure the container, the single completed use of which did not destroy them or affect their status as containers, are dutiable under paragraph 127, tariff act of 1913, as "* * * cylindrical or tubular tanks or vessels, for holding gas, liquids, or other material."—United States *v.* Garramone (2 Ct. Cust. Appls., 30; T. D. 31577) and United States *v.* Braun Chemical Co. (2 Ct. Cust. Appls., 57; T. D. 31596) distinguished, and United States *v.* Marx (1 Ct. Cust. Appls., 152; T. D. 31210) followed.

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2. BARREL—CYLINDER.

Within the meaning of paragraph 127, tariff act of 1913, a barrel-shaped drum may properly be regarded as a cylindrical vessel.

United States Court of Customs Appeals, January 28, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38167.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Allan R. Brown for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court.

This case involves the tariff classification of iron drums containing binoxide of barium, which were imported at the port of New York and assessed by the collector of customs as cylindrical or tubular tanks or vessels, dutiable at 20 per cent ad valorem under the provisions of that part of paragraph 127 of the tariff act of 1913 which reads as follows:

127. * * * Cylindrical or tubular tanks or vessels, for holding gas, liquids, or other material, whether full or empty; * * * 20 per centum ad valorem.

The importers claimed in their protest that the drums were the usual containers of merchandise subject to a specific rate of duty and that they were therefore entitled to free entry. The board found that the drums were the usual containers of binoxide of barium and that, as it was necessary to destroy the containers in order to remove the contents, the drums were not dutiable as found by the collector.

In support of the board's decision the importers contend that the iron drums under consideration are of the same class and character as those involved in United States *v.* Garramone (2 Ct. Cust. Appls., 30; T. D. 31577) and United States *v.* Braun Chemical Co. (2 Ct. Cust. Appls., 57; T. D. 31596). We do not think that the evidence disclosed by the record on appeal justifies that contention.

It appears from the evidence and samples in the case that the drums the classification of which was protested are made of sheet iron and that one of them is barrel shaped and the other, a smaller vessel, is apparently a right cylinder in form. In the head of the barrel-shaped drum there is a large opening by means of which the vessel may be filled or emptied. This opening is covered by a lid which, when the vessel is in normal condition, can be readily removed and replaced. The smaller vessel has also an opening in the head which, according to the testimony, is closed by a cork sealed in place by a tin cap. To remove the cork the tin cap is cut off, and the sample shows that the removal of the tin cap does not injure the container in any way. It is not disputed that drums of the kind represented by the larger vessel have an invoice value of $2.70 and those of which the smaller container is a type an invoice value of $2.14.

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It was shown by the testimony that both kinds of drums have some merchantable value after the removal of the binoxide of barium, and it is apparent from an examination of the samples that both are available for further use as receptacles. As the drums in question are strongly built metal vessels, the single completed use of which did not reduce them to rubbish or affect their status as containers, we think they are very clearly distinguishable from those which we considered in United States *v.* Garramone, *supra,* and United States *v.* Braun Chemical Co., *supra.* It is true that the large drum is barrel shaped and therefore not a right cylinder in form. A barrel, however, is defined to be a cylindrical wooden vessel (Oxford Dictionary), a vessel or cask of a cylindrical form, generally bulging in the middle, usually made of wooden staves bound together with hoops, and having flat parallel heads (Century Dictionary), an approximately cylindrical vessel, usually slightly bulging in the middle, generally made of wooden staves held together by hoops (Standard Dictionary). A barrel-shaped drum may, therefore, we think, be properly regarded as a cylindrical vessel.

The drums made the subject of controversy by this appeal are smaller in size, but are not otherwise substantially different from those which were held by this Court in United States *v.* Marx (1 Ct. Cust. Appls., 152; T. D. 31210) to be dutiable at 30 per cent ad valorem as cylindrical or tubular tanks or vessels under paragraph 151 of the tariff act of 1909. The provision of that paragraph for cylindrical or tubular tanks or vessels was reenacted as paragraph 127 of the tariff act of 1913 without any change other than the imposition of a duty of 20 per cent instead of 30 per cent ad valorem. Adhering to the ruling made in the case of United States *v.* Marx, we must hold that the drums in the present case are not free of duty, but that they were correctly classified and assessed for duty by the collector under paragraph 127.

The decision of the Board of General Appraisers is therefore *reversed.*

(T. D. 36146.)

Tulip bulbs.

MALTUS & WARE *v.* UNITED STATES (No. 1611).

1. CONSTRUCTION—CHANGE OF LANGUAGE SIGNIFIES CHANGE OF MEANING.

Congress must be presumed to have intended a change of meaning in changing the adjective "tulip," tariff act of 1909, to the noun "tulips," paragraph 210, tariff act of 1913.

2. SAME—PARAGRAPH NEEDS NO CONSTRUCTION—CONGRESS PRESUMED TO HAVE INTENDED ITS ACTS.

This paragraph as written is not ambiguous, and its application as written will lead to no absurdity, manifest contradiction of its apparent purpose, hardship, or injustice. There is, then, no occasion to invoke rules of construction; Congress

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must be presumed to have intended to make the change it did make; and this paragraph must be understood and applied according to the natural import of the language employed.

3. TULIP BULBS, HOW DUTIABLE.

Tulip bulbs are not dutiable as "tulips" under the second clause of paragraph 210, tariff act of 1913, but as "all other bulbs" under the sixth.

United States Court of Customs Appeals, January 28, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38202.

[Reversed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The issue here is whether tulip bulbs are dutiable as assessed by the collector at $1 per thousand under the second clause in paragraph 210 of the tariff act of 1913, or as claimed by the importers at 50 cents per thousand under the sixth clause, the catch-all provision, therein.

The Board of General Appraisers, upon hearing, sustained the assessment and the importers appeal.

The determination of the issue requires not only an examination of paragraph 210 but its predecessor, paragraph 263 of the act of 1909 as well, and we here insert them:

210. Orchids, palms, azaleas indica, and cut flowers, preserved or fresh, 25 per centum ad valorem; lily of the valley pips, tulips, narcissus, begonia, and gloxinia bulbs, $1 per thousand; hyacinth bulbs, astilbe, dielytra, and lily of the valley clumps, $2.50 per thousand; lily bulbs and calla bulbs or corms, $5 per thousand; herbaceous peony, Iris Kaempferri or Germanica, canna, dahlia, and amaryllis bulbs, $10 per thousand; all other bulbs, roots, root stocks, corms, and tubers, which are cultivated for their flowers or foliage, 50 cents per thousand: *Provided*, That all mature mother flowering bulbs imported exclusively for propagating purposes shall be admitted free of duty.

263. Orchids, palms, azaleas, and all other decorative or greenhouse plants and cut flowers, preserved or fresh, 25 per centum ad valorem; lily of the valley pips, tulip, narcissus, begonia, and gloxinia bulbs, $1 per thousand; hyacinth, astilbe, dielytra and lily of the valley clumps, $2.50 per thousand; lily bulbs and calla bulbs, $5 per thousand; peony, Iris Kaempferri or Germanica, canna, dahlia, and amaryllis bulbs, $10 per thousand; all other bulbs, bulbous roots or corms which are cultivated for their flowers or foliage, 50 cents per thousand.

At once it appears that there are in each of these two paragraphs six separate clauses providing for different rates of duty, while in the corresponding clauses the rates are the same. We are here interested mainly in a comparison of the second clauses, respectively, because, if these tulip bulbs are not dutiable under that clause of

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paragraph 210, it seems to be conceded that the sixth clause thereof is applicable.

In the earlier paragraph the second clause provided for "lily of the valley pips, tulip, narcissus, begonia, and gloxinia bulbs," while that clause of the paragraph now in force reads "lily of the valley pips, tulips, narcissus, begonia, and gloxinia bulbs." In the earlier statute the word *tulip* is grammatically an adjective modifier of bulbs, while in the later paragraph the word *tulips* is not grammatically an adjective modifier, but is a noun, and the importers' claim here is founded wholly upon this change in the language of the two clauses.

It is unnecessary to cite authorities to the proposition that the fact that the language of a statute is changed ordinarily presumes a legislative intent to correspondingly change preexisting law, and, further, that unless a statute is ambiguous there is no occasion to invoke rules of construction. It must be understood and applied according to the natural import of the language employed. Accompanying this latter rule is another, well recognized, that if construed in its ordinary meaning and grammatical construction the application of the statute leads to manifest contradiction of the apparent purpose of the enactment or to absurdity, hardship, or injustice not intended, the courts will, if the same is possible, interpret the language employed to avoid these consequences. Endlich on Interpretation of Statutes (sec. 295); United States *v.* Kirby (74 U. S., 482); Church of Holy Trinity *v.* United States (143 U. S., 457); Lau Ow Bew *v.* United States (144 U. S., 47, 59); United States *v.* Riggs (203 U. S., 136); Heide *v.* United States (2 Ct. Cust. Appls., 399; T. D. 32166).

The Government here in effect urges that although grammatically construed the statute may warrant the importers' contention, nevertheless, in view of the history of the paragraph, its context and spirit, it should not be given that effect and suggests that the addition of the letter "s" to the word "tulip" in the earlier clause was the result of a typographical error.

It appears that when the tariff bill was first introduced in the House the paragraph of the act of 1913 under consideration was identical with paragraph 263 of the act of 1909, except that the letter "s" was added to tulip. Comparing the paragraph as introduced with the same as finally enacted, we find numerous changes have been made therein; words have been stricken out, others have been inserted or added, a proviso attached, and with respect to the duty rates, synonymous forms of expression have been employed. The only change made in the second clause, it is true, is the use of equivalent language for declaring the same rate of duty, but, in view of the fact that the entire paragraph was the subject of such careful consideration and close inspection, we can not believe that the

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change from *tulip* to *tulips* was overlooked. When it is also considered that the paragraph, as a part of the bill, underwent various reprints in its legislative journey, the conclusion seems irresistible that the letter "s" was purposely introduced and deliberately retained.

Neither are we at all clear that it can be said that the results consequent upon enforcing this clause according to its grammatical construction are such as to conflict with the spirit or context of the paragraph, are absurd, unjust, or presumably not intended. Under the earlier paragraph, tulip bulbs fell within the second clause; under the latter, they are relegated to the sixth clause and pay one-half the duty formerly assessed thereon and one-half the duty now assessed upon articles within the second clause. Congress may well have thought it a wise policy to change the classification of tulip bulbs in this manner, and as to the wisdom of such policy we have no power to inquire. The context of the paragraph is adapted as well to the one as to the other construction, and it is also consistent therewith to impose upon tulips the rate of duty that was formerly assessed upon tulip bulbs.

The whole issue and its determination may be summed up as follows: Congress has apparently deliberately substituted tulips, the *noun*, for tulip, the *adjective*, is presumed to have intended to do so, and no sufficient legal reason exists to justify the court in saying such was not the intent. No strained construction should be indulged unless clearly necessary to accomplish the execution of a congressional purpose, and where two constructions are equally probable that one should not be adopted which results in the imposition of the higher tax.

In Breck *v.* United States (2 Ct. Cust. Appls., 26; T. D. 31576) an analogous question was considered, cases were examined, and, quoting from Endlich on Interpretation of Statutes, it was said: "It is a well-settled rule of construction that the grammatical sense must be adopted, unless there are within the statute cogent reasons indicating a contrary intent upon the part of the lawmakers."

The judgment of the Board of General Appraisers is *reversed*.

(T. D. 36147.)

Immediate coverings of tea.

WRIGHT & GRAHAM CO. *et al.* *v.* UNITED STATES (No. 1588). UNITED STATES *v.* WRIGHT & GRAHAM CO. *et al.* (No. 1596).

1. CONTAINERS OF TEA—WHEN DUTIABLE.

Paragraph 627, tariff act of 1913, levying duty upon "cans, boxes, or other containers of tea packed in packages of less than five pounds," does not levy duty upon the immediate containers of tea in less than 5-pound packages. The provision is relative in its terms and does not apply to immediate containers.

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2. CONSTRUCTION—DOUBT FAVORS IMPORTER.

Where there is entertained by the court a doubt as to the construction of a provision of law levying duty upon imported merchandise, it is the duty of the court to resolve that doubt in favor of the importer.

United States Court of Customs Appeals, January 28, 1916.

CROSS appeals from Board of United States General Appraisers, Abstract 38142.

[Reversed as to 1588; affirmed as to 1596.]

McLaughlin, Russell, Coe & Sprague and *Sharretts, Coe & Hillis* (*Thaddeus S. Sharretts* and *Edward P. Sharretts* on the brief) for Wright & Graham Co. *et al.*

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

These importations were of tea. The issues concern the coverings of the merchandise. Two appeals are here upon the same record, arising out of as many classes of coverings or containers employed. One of these classes consisted of lead packets and tin boxes of tea, each weighing less than five pounds, packed in other intermediate metal or pasteboard coverings or containers, whereby the latter held a great number of the individual packages. The other class consisted of similar lead packets and tin boxes and packets and boxes made of pasteboard and metal, each containing less than 5 pounds of tea, without being encased in such intermediate coverings or containers. All the importations were made in ordinary shipping cases, the former class with and the latter without the intermediate coverings or containers. In each class of cases, some but not all of the immediate coverings were lined with or included more immediate content coverings of thin paper, in no case sufficiently strong to alone and unsupported constitute a covering of such of sufficient strength or stability to retain the contents either for the purpose of shipment or during consumption. Duty was levied by the collector in each case upon the immediate coverings under the provisions of paragraph 627 of the tariff act of 1913, reading in so far as pertinent as follows:

627. Tea not specially provided for in this section, and tea plants: *Provided*, That the cans, boxes, or other containers of tea packed in packages of less than five pounds each shall be dutiable at the rate chargeable thereon if imported empty: * * *.

The Board of General Appraisers under the authority of the decision of this court in Wright & Graham *v.* United States (5 Ct. Cust. Appls., 453; T. D. 34976), an earlier appeal by the same importers, sustained the protests covering those cases wherein intermediate containers were employed, and, differentiating that case, overruled the protests in the cases wherein there were no intermediate containers or coverings. Cross appeals to this court bring here for review the decision of the board as to both classes of cases. Counsel for the importers strenuously contend that the case of Wright & Graham

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Co. *v.* United States, *supra*, the former appeal by the same importers, is conclusive of these appeals. The court is of the opinion that the facts as to the second class of cases covered by these appeals present a cause by no means necessarily decided in the former appeal; and, holding the views expressed in its opinion, the board with perfect propriety differentiated the cases and afforded this court the benefit of its views. In the last analysis, however, in both instances and in all the appeals, the determinative issue is one of law, resolved by answer to the question, Did Congress by the quoted paragraph direct assessment of duty upon the immediate coverings of imported tea?

This court in Wright & Graham Co. *v.* United States, *supra*, held to the contrary. Review and an overruling of that decision is herein asked by the Government.

After carefully reviewing the records of the former appeal, and a thorough study of this record, the briefs which are replete, the pertinent debates of Congress, and the applicable law, the court is unable to find controlling warrant of decision herein supporting the Government's contention. At most, that contention is confronted with grave doubt. As was said by the board in its decision herein, there is "doubt as to the intent and meaning of Congress" as expressed in the paragraph. In such status of view the duty of the board and this court is well expressed by the board in G. A. 7015 (T. D. 30571), in construing the predecessor paragraph of this paragraph 195 (act of 1909) as follows:

> The other rule, which in our judgment necessarily controls the decision in this case, was most admirably and briefly stated by Justice Nelson at circuit in the case of Powers *v.* Barney (5 Blatch., 202; 19 Fed. Cas., 1234), in which decision he says: "Another principle may also be invoked, which is, that in cases of serious ambiguity in the language of the act, or doubtful classification of articles, the construction is to be in favor of the importer, as duties are never imposed on the citizen upon vague or doubtful interpretations." The same rule was more elaborately stated by Justice Story in United States *v.* Wigglesworth, *supra:* "It is, as I conceive, a general rule in the interpretation of all statutes, levying taxes or duties upon subjects or citizens, not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the Government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import. Revenue statutes are in no just sense either remedial laws or laws founded upon any permanent public policy, and, therefore, are not to be liberally construed." See also Hartranft *v.* Wiegmann (121 U. S., 609).

Woolworth *v.* United States (1 Ct. Cust. Appls., 120; T. D. 31119); United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 202; T. D. 31237); United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406); United States *v.* Michelin Tire Co. (1 Ct. Cust. Appls., 518; T. D. 31544); United States *v.* Harper (2 Ct. Cust. Appls., 101;

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T. D. 31655); American Express Co. *v.* United States (3 Ct. Cust. Appls., 475; T. D. 33121); United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509; T. D. 33166); Newhall & Co. *et al.* *v.* United States (4 Ct. Cust. Appls., 134; T. D. 33410); Goat and Sheepskin Import Co. *et al.* *v.* United States (5 Ct. Cust. Appls., 178; T. D. 34254).

This court in the former appeal of these importers expressed the same doubt. The opinion carefully reviews the history, legislative and judicial, of the paragraph, and concludes the congressional purpose to be to tax the intermediate rather than the immediate coverings of the tea. Undoubtedly, as the opinion indicates, the court was in a measure moved to that conclusion by the facts of that record. It concerned only importations containing intermediate coverings or containers, and stress is laid upon the fact that the evidence indicated a relative superiority in substance and value of the intermediate over the immediate coverings. It may be said in passing, however, that that was not the controlling reason of the opinion. The relative value or strength of the coverings is not in that opinion made determinative of this issue; nor does the statute make such factors of its application. The court pointed with emphasis to the significant legislative fact that, as submitted to Congress, the paragraph read "cans, boxes, *packages*, and other containers," and note that Congress upon enactment struck out the word "packages," thereby indicating a purpose to confine the tax to a class of containers more durable than is ordinarily conceived by the word "packages." The court also adverted to the legislative fact that when "immediate" coverings were referred to in other paragraphs of the act, enumerating paragraphs 180, 199, 203, 209, 228, and 229, act of 1913, the word "immediate" was used by Congress.

As recited in the previous appeal by these importers, the parent provision to this paragraph originated as paragraph 195, tariff act of 1909. Its purpose was stated upon the floor of the Senate, wherein the provision originated, by Senator Aldrich, chairman of the Finance Committee, presenting the same, in answer to many inquiries of Senators as to its purpose, as follows:

> Mr. ALDRICH. It applies to importations of this kind. It has been the habit of certain people to import, say, from Canada, 5-pound packages containing tea, which is on the free list, but those packages were valuable; that is, they were lithographed, they were practically works of art, and under the law as it now stands those packages came in free, because tea was free. So there were certain people sending tea to China and putting it up in 5-pound packages which were of themselves practically works of art, and importing those packages into the United States free of duty.
>
> The same thing was true as to a large class of articles coming in from Germany, where highly decorated containers of tin were imported without duty because the contents were free or because the contents were liable to a low rate of duty.

The notable and pertinent fact is that the provision was stated *to apply only to those containers of packages weighing 5 pounds*, and, of

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course, by its terms, over 5 pounds. It was a provision aimed at a substantial class of merchandise of suitable strength and durability and size to hold at least 5 pounds of tea, and the Board of General Appraisers, construing the paragraph, so held. G. A. 7015 (T. D. 30571).

While the paragraph did not mention "tea," it was by its terms obviously intended to be, and was essentially so confined in practice. It was not intended by Congress, nor was it held in practice, to apply to any of the merchandise here in suit, though the record fairly discloses that package tea then, as now, was imported. That it was which gave rise to the 5-pound limitation.

Among the objections, if not the chief complaint, against this paragraph addressed to the Congress upon enactment of the present act, was that it was confined to metal containers only, and permitted other more valuable containers to be imported free. There was, it is true, request for a provision levying duty upon all tea coverings. Tea, however, was to be continued by this act free of duty. It had been so in this country for over 70 years, or since September 11, 1841, excepting during the Civil War and from June 14, 1898, to January 1, 1903. And, under the general statutory provisions prevailing for as many years, the coverings of imported tea, unless unusual, were equally free. Of course the purpose of permitting the free importation of tea would be defeated by any tax upon the necessary or usual coverings of tea. Moreover, in view of the great variety and variant values of usual coverings of package tea, which follow the same into consumption, any tax upon the same, such as asserted, would not only result *pro tanto* in a defeat of "free tea" but in grossly unequal taxes of the same, accordingly as it was packed, and which, indeed, if here applied, we have no doubt would in many instances levy a tax greater than or measurably near the value of the tea.

Bearing in mind these facts, the court is loath to adopt a conclusion in construing a concededly doubtfully worded proviso which would in practice, oftentimes if not always, defeat the purview of the paragraph.

The court is not only of the opinion that Congress did not intend by this proviso to defeat the purview of the paragraph granting free entry of tea as usually imported in packages, but does not believe the words of Congress so import.

This statute speaks of and in terms contemplates *relative* coverings. Its application, if this be true, is confined to those cases only wherein that relation exists by reason of the presence of all those related coverings contemplated by the paragraph. The existence of the factors of relation are made, and thus become conditions of the applicability of the act. The grammatical arrangement of the words

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of this paragraph declare these necessary factors of relation. Let us repeat the proviso for immediate analysis:

627. * * * *Provided*, That the cans, boxes, or other containers of tea packed in packages of less than five pounds each shall be dutiable at the rate chargeable thereon if imported empty: * * *.

"That the cans, boxes, or other containers of" what? "Tea," only? No. But of "tea" "*packed in packages.*" Two related conditions of merchandise must be present: 1. "Cans, boxes, or other containers"; 2. "tea *packed in packages.*" There must be (1) packages of tea, (2) imported in cans, boxes, or other containers. By the same elementary rule, what is here made dutiable? Obviously not the "tea," nor the "tea packed in packages," but the "cans, boxes, or other containers" which contain "tea packed in packages," and no other cans, boxes, or other containers. The two essential relative conditions, then, are, there must be "cans, boxes, or other containers" *and also* "tea packed in packages." Where either is absent the proviso has no application.

The initial inquiry, then, is, What here constitutes "tea packed in packages"? Does the individual can, for example, constitute such? Does the single frail paper lining or bag surrounding the tea within each such constitute "tea packed in packages"? Obviously were these papers "packages" such was not the legislative concept, which speaks in the plural and hence of more than one package gathered within the particular container.

This court has frequently declared what constitutes "packages" under the laws of import commerce. That feature of the case is ruled by an early decision of this court, United States *v.* Yamashita (1 Ct. Cust. Appls., 341; T. D. 31435). The case concerned "dried fish, packed in 1-pound paper packages, sealed, ready for sale, such sealed packages being in turn packed in wooden packing boxes or cases, and thus imported." The court *inter alia* observed "it hardly seems possible that Congress intended to lay a duty on the paper in which the fish were wrapped, or to regard it as in itself a container or package." See, also, Choy Chong Woh & Co. *et al. v.* United States (2 Ct. Cust. Appls., 274; T. D. 31978); Illfelder & Co. *et al. v.* United States (2 Ct. Cust. Appls., 299; T. D. 32040); Bush & Co. (Inc.) *et al. v.* United States (6 Ct. Cust. Appls., —; T. D. 35974). The "package" referred to in commerce between foreign lands and ours, as stated in those decisions, denotes "the usual unit of transportation from the country of export to the United States."

As stated in the Yamashita case and the previous Wright & Graham Co. decisions of this court it is significant that the Congress dropped from the enumeration of dutiable subjects the word "packages," thereby confining the tax, according to the rule of *ejusdem*

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generis applied in the Yamashita case, to "cans, boxes, or other containers," all more durable and customary import containers.

Moreover, the very words of the proviso literally and legally confine this tax to those "cans, boxes, or other containers" "of tea packed in packages." In other words, to those containers in which there are a *plurality* or number of packages, which alone excludes application of the tax to those containers in which there are less than a plurality of packages of tea. In all cases, however, the immediate coverings of the tea here assessed with duty inclose but a single quantity of such. *Ex vi termini* such must be the case with all immediate coverings.

Finally, it may be noted that it would be a strange legislative course which commenced (par. 195, act of 1909) with the avowed purpose of levying duty upon intermediate containers which were being fashioned of such qualities and durability as to become competing commercial quantities and ended by (par. 627, act of 1913) allowing these intermediate coverings free entry and taxing all kinds and classes of immediate coverings.

The court is of the view that paragraph 627 of the act of 1913, was intended by Congress as an extension of paragraph 195 of the act of 1909, from limited metal to all cans, boxes, and other containers of tea in which were packed packages of tea weighing less than 5 pounds. This construction in this and the previous appeal gives application to the paragraph by taxing the importation of intermediate containers of tea at least, but does not extend the tax to those immediate coverings of tea in packages of less than 5 pounds.

The decision of the board sustaining the first-noted class of protests is *affirmed*, and as to the latter, *reversed*.

(T. D. 36148.)

Surgical forceps—Nippers and pliers.

KOCH & CO. *v.* UNITED STATES (No. 1590).

1. PIVOTED JAW TOOLS NOT NECESSARILY "NIPPERS" OR "PLIERS."

Surgical instruments are not made classifiable as "nippers" or "pliers" under paragraph 166, tariff act of 1913, by reason of the fact that they have two lever handles working on a pivot and operating two cutting, gripping, or pinching jaws or blades.

2. CONSTRUCTION.

To hold this would reduce to surplusage the enumeration elsewhere in the act of other instruments embodying this mechanical principle, and render either the word "nippers" or the word "pliers" in this paragraph unnecessary.

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3. LEGISLATIVE HISTORY.

Congress rejected a motion to amend paragraph 166 so as to include surgical and dental instruments; and the court declines to adopt a construction effecting a result precisely contrary to this action by Congress.

United States Court of Customs Appeals, January 28, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7763 (T. D. 35628).

[Reversed.]

Curie, Smith & Maxwell (*Thomas M. Lane* and *George J. Puckhafer* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney, of counsel), for the United States.

Before SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal presents the question of the appropriate dutiable classification of certain surgical instruments. Representative samples are before the court. The record discloses that they are uniformly referred to and described as follows: Exhibit 1, Auword's cranioclast, an instrument used in some cases of stillbirth for crushing the head of the dead fetus to facilitate its extraction. This instrument is composed of heavy jaws between which is operated a tongue or lever, the contact jaws of which are serrated. Force is applied by a screw, operating alternately to bring each of the outer jaws into immediate contact with the interior tongue, whereupon they are locked by suitable device. The outer jaws operate upon separate fulcrums, which constitute parts of the center tongue. The force applied in operation in the crushing of the skull is effected by means of a screw, similar to the force applied to a blacksmith's or carpenter's vise. Exhibit 2, Tarnier's obstetrical forceps, used in childbirth. To this instrument is attached a mechanism whereby extra force may be exercised in its operation. Exhibit 5, Duplay's tenaculum forceps. This is a hooked instrument, resembling scissors, operating upon a fulcrum, the jaws being sharp pointed, meeting at right angles, and is used in seizing the coats of a divided blood vessel and drawing it out to be tied. Exhibit 6, Pean's artery forceps, used for holding arteries, an instrument with jaws at right angles with serrated interiors. Exhibit 7, Murphy's button forceps, used for adjusting Murphy's button, an appliance used in intestinal surgery. Exhibit 8, Hartman's articulated nasal forceps, an instrument operating upon a double fulcrum. Exhibit 9, Byford's compression forceps, used for clamping arteries. Exhibit 9*a*, Tait's artery forceps, used for clamping arteries. Exhibit 10, Husson's needle holder, used for holding the needle in sewing up wounds. Exhibit 11, Jones's angular curved artery forceps, used for clamping arteries. Exhibit 12, Pean's hysterectomy forceps, used in intestinal surgery. Exhibits 6 to 12 are similar scissors-appearing instruments with suitable jaws for the designated uses. Exhibit 13,

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Wieder's needle holder, used for holding the needle in sewing up wounds. There is also in the record an illustrative Exhibit H, which is a bone-cutting instrument.

The instruments were classified for dutiable purposes by the collector at the port of New York as nippers or pliers under the provisions of paragraph 166 of the tariff act of 1913, reading:

166. Nippers and pliers of all kinds wholly or partly manufactured, * * *.

The importers, who are appellants here, make contention that they are not so dutiable, but properly ratable for duty purposes as articles or wares not specially provided for, composed wholly or in chief value of iron or other metal, under the provisions of paragraph 167 of that act. The Board of General Appraisers overruled the protests.

The first issue tendered by appellants before the board and here renewed was and is that of commercial designation. The board overruled this contention. Error therefor is assigned. Were the question of commercial designation in the case the court would with much hesitation affirm this finding of the board under the decisions cited in this record. While the more confined doctrine of commercial designation denies its application where "there is no reference in the statute, either expressly or by implication, to any commercial usage" (Newman *v.* Arthur, 109 U. S., 132–138). the converse is presented by the language of this paragraph. "Nippers and pliers *of all kinds*" expressly includes that kind commonly as well as that kind commercially so known; and, obviously, excludes *ex vi termini* application of the rule of commercial designation which would relate the statute to but one of possibly several kinds of nippers and pliers. Habicht, Braun & Co. *et al. v.* United States (2 Ct. Cust. Appls., 457; T. D. 32206).

The inquiry therefore becomes, Are these instruments "nippers and pliers" as those terms are commonly used and understood?

In this ascertainment the board adopted as decisive a principle of mechanical operation, concluding:

Irrespective, therefore, of the technical trade names under which they may be known, we hold all of the articles here under consideration which, in the principle of their construction, have two lever handles working on a pivot, and which operate two cutting, gripping, or pinching jaws or blades, to be properly classifiable for duty under the provision in said paragraph 166 for "nippers and pliers of all kinds, wholly or partly manufactured."

The court after much deliberation finds unmistakable evidences written in the act that Congress did not adopt these words in that sense. If Congress intended by the words "nippers and pliers of all kinds, wholly or partly manufactured," to include at the prescribed 30 per centum ad valorem rate of duty all instruments "which

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have two lever handles working on a pivot, and which operate two cutting, gripping, or pinching jaws or blades," then, why did it expressly provide in paragraph 128 for "scissors and shears, and blades for the same, finished or unfinished, 30 per centum ad valorem?" Or, since that latter provision was of both previous legislative ancestry and earlier placement in the act, if Congress was by such enumerations levying a tax upon all instruments possessing a similar mechanical operative principle, why was it necessary, after the provisions of paragraph 128, to insert those of 162? Or, if the mention of those named taxed all instruments of this mechanical principle why enumerate both nippers *and* pliers? Either enumeration in that view covered the entire trade. Moreover, it is shown that in practical application and administration this principle of decision could not survive the logical test *reductio ad absurdum*. Attempting to apply this principle previously announced by the board, the Treasury Department in T. D. 34270 observes:

> While the department concurs in the reasoning of the board in the decisions cited and followed the principle underlying the said decision in T. D. 33094, where it held that nail or manicure nippers were dutiable under paragraph 198 of the tariff act of 1909, it does not follow that all jaw tools or instruments having two handles pivoted together are included within the terms "nippers" or "pliers." For instance, it would not be seriously contended that bell punches and ticket punches used by conductors on cars or buttonhole punches are nippers or pliers as these terms are ordinarily used.

There might be added to the foregoing that such articles as rivet punches, certain post-hole diggers, and numerous other similar tools are equally within this operative principle. The court is loath to attribute to Congress a purpose which at once renders other provisions of the act surplusage and the enforcement of which individually encounters numerous arbitrary exceptions.

We think the legislative concept evidences a more accurate and discriminating use of those words. Generally, according to Knight's American Mechanical Dictionary, pliers, nippers, scissors, shears, forceps, pincers, and all instruments which like these operate upon the mechanical principle stated, are known as "jaw tools," which by that authority are defined as "tools having the capacity for grasping, as between jaws or fingers." Thereupon that authority enumerates 74 such, including "forceps," "nippers," "pliers," "scissors," "shears," "tongs," and "tweezers." Under the title "forceps" that authority observes:

> *Forceps.*—A tool applied to grasping, and consisting of two portions pivoted together, the ends forming respectively handles and jaws.
>
> Shears, scissors, pincers, pliers, tongs, calipers, nippers, punches, and some other tools agree in the pivoting of duplex parts, *but they differ in some peculiarity of the jaws or in their special application for cutting or grasping.* See jaw tools.
>
> * * * * * * *
>
> Specifically: In obstetrics, an instrument having a pair of curved blades for grasping the head of the fetus and assisting delivery.

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Definitions of nippers, pliers, and pinchers are then given as follows:

Nippers.—1. A grasping tool with cutting jaws. * * * 2. (Dentistry, etc.) The mechanical forceps or nippers used by dentists are for operating on the plates. * * *

Pliers.—A small pair of pinchers with long jaws, adapted to handle small articles, such as the parts of a watch or other fine machinery. It is also specially adapted for bending and shaping wire. * * *

Pinchers.—An instrument having two handles and two grasping jaws, formed of two pieces pivoted together. Pinchers are adapted for special work, such as drawing nails, for shoemakers' use * * *.

While all such tools are operated upon a similar mechanical principle and while the various lexicographers defining the one may and often do define the one as "like" or a "kind of" the other—it is only in that they possess an operative principle common not alone to them but numerous other tools, but they do, as stated by Knight, "*differ* in some peculiarity of the jaws *or in their special application* for cutting or grasping."

The court is of the view that Congress legislated with a view to these more accurate definitions for the following reasons:

First. The language of the act so argues. It was in this view alone that employment of both words "nippers *and* pliers" in paragraph 166 was necessary; the separate provision for shears and scissors in paragraph 128 or this entire paragraph otherwise becomes surplusage; and the enumeration of blacksmiths' "tongs" specifically in paragraph 122 evidences that Congress was giving discriminating attention to these related subjects.

Second. Such words, "nippers," "pliers," "forceps," and "tongs," are words of common everyday use known to and employed by all men of affairs which convey to the mind of ordinary understanding and experience instruments of different construction and use; and, while commercial designation is not in the case, the testimony, catalogues, and exhibits herein become and are plenary and satisfying evidence, corroborative and evidentiary, of the common use of these terms in their distinct and different meanings. Assuredly the man of the farm, the man of the bench and shop, the man of great telegraph, telephone, or railroad operations, or the man in touch with the common automobile operations of the day, immediately upon the suggestion of the words, forms a definite, distinct, and discriminating idea of what is meant by "pliers," "pinchers," or "nippers," which in no sense includes dental, obstetrical, or other "forceps," the suggestion of which immediately carries the mind to the dental laboratory or surgical hospital.

Third. Specific provision for nippers and pliers as a tariff entity first appeared as paragraph 198, tariff act of 1909. It was apparently submitted at the request of a firm of manufacturers of tools rep-

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resented herein by Exhibits B and F, nippers, and C, D, and E. pliers, the well known and commonly understood tools of that name. Tariff Hearings, Committee on Ways and Means, 1908–1909 (vol. 3, p. 2782). The same firm and that industry alone appeared in 1913. Tariff Hearings, Committee on Ways and Means, 1913 (vol. 2, p. 2070). In both instances it was represented that this firm manufactured a particularly high-grade article of material especially fitted therefor. No other interests appeared, and apparently Congress legislated with a view to this industry alone.

Fourth. Much stress is laid by the board in its opinion and the Government herein upon the legislative fact that paragraph 198, act of 1909, contained the parenthetical words "(except blacksmiths' tongs, surgical and dental instruments and parts thereof)," which phrase was omitted from paragraph 166 of the present act. It is claimed that this omission implies an intention or interpretation upon the part of Congress that its omission included such instruments within the remainder of the paragraph. There is undeniable weight to this argument, and were this the only pertinent phase of that point we might be inclined to hold it controlling. That Congress did not thereby intend "blacksmiths' tongs" to so fall for dutiable purposes is expressly shown by the transfer of these tools to and their express inclusion in paragraph 122 for dutiable purposes.

Affirmative contrary action was also had as to surgical and dental instruments. On August 12, 1913, Senator Smoot requested the Finance Committee to reconsider paragraph 166 (then paragraph 168) with a view of appending to it a provision for surgical and dental instruments. Senator Thomas announced for the Finance Committee that the proposal would receive its consideration (Congressional Record, vol. 50, pt. 4, 63d Cong., 1st sess., p. 3285). The matter came up again on September 2, 1913, and the following proceedings occurred (Congressional Record, vol. 50, pt. 4, 63d Cong., 1st sess., p. 4070):

Mr. SMOOT. There is one paragraph that I should like to call the attention of the Senator from Colorado to before we reach that paragraph that was passed over, and that is paragraph 168. The Senator will remember I asked that there be an amendment made to that paragraph.

Mr. THOMAS. Yes; that was considered and the full committee objected to the amendment. It was presented along the line of the Senator's suggestion to the full committee, but was not approved. The Senator is referring to surgical and dental instruments?

Mr. SMOOT. I suggested to include in that amendment "surgical or dental instruments or parts thereof."

Mr. THOMAS. The committee did not approve of that amendment.

Mr. SMOOT. The committee refused to accept the amendment?

Mr. THOMAS. Yes.

Mr. SMOOT. Mr. President, so that the record will be straight, I desire at this time to offer an amendment to paragraph 168. After the word "nippers" I move to insert a comma and the words "and surgical and dental instruments and parts thereof."

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The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. In paragraph 168, page 49, line 24, after the word "nippers" insert a comma and the words "surgical and dental instruments or parts thereof."

The amendment was rejected.

Congress, therefore, having expressly refused to include surgical or dental instruments in paragraph 166 for dutiable purposes, the court does not feel warranted in here including them, holding Congress did that by implication which it expressly refused to do by direction.

The court is of the opinion for the reasons stated that paragraph 166 does not include for dutiable purposes those surgical instruments represented by these samples, all of which are fairly shown by the record to be commonly known as "forceps" and not as "nippers" or "pliers."

Reversed.

(T. D. 36149.)

Undervaluation.

UNITED STATES *v.* BATES (No. 1604).

UNDERVALUATION.

Where the consular invoice showed a net *per se* value of 8,310.60 francs, non-dutiable charges of 113.25 francs, and dutiable charges of 972 francs, and entrant, attaching his declaration to the consular invoice, erroneously deducted the non-dutiable charges from the net *per se* value stated in the invoice, making no mention of the dutiable charges, "additional duty," under paragraph I of section 3, tariff act of 1913, should be levied proportionate to an undervaluation of 113.25 francs, and not 113.25 plus 972 francs.

United States Court of Customs Appeals, January 28, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38066.

[Affirmed.]

Bert Hanson, Assistant Attorney General, for the United States.

Curie, Smith & Maxwell (*Thomas M. Lane* of counsel) for appellees.

Before SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The sole question in this case relates to certain "additional duty" which was levied upon the present merchandise by the collector, under authority of paragraph I of section 3, of the tariff act of 1913. The following is a copy of the provision in question:

* * * And if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per centum of the total appraised value thereof for each 1 per centum that such appraised value exceeds the value declared in the entry; * * *.

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The merchandise consisted of straw hats which were imported from Italy and were dutiable at the rate of 40 per cent ad valorem. They were entered by the importer at the port of New York upon a consular invoice executed at Milan by the sellers of the goods.

The importation comprised 27 cases, each containing 1 dozen hats. These were separately itemized in the invoice, together with the price of each, the aggregate being 8,784 francs. From that total a cash discount of 5 per cent was deducted, leaving 8,310.60 francs as the stated net value of the hats. Immediately underneath the foregoing statement in the invoice were the following items:

	Francs.
Carriage to Genoa	100
Consular fee	13.25
Packing	972
	1,085.25

Upon the face of the invoice the sum of these charges was neither added to nor deducted from the valuation of 8,310.60 francs, beneath which they were entered. But upon the back of the invoice in an appropriate printed form the amount of the invoice was stated to be 9,395.85 francs, which amount was evidently reached by adding the sum of the charges, viz, 1,085.25 francs, to the value of the hats previously stated in the invoice, viz, 8,310.60 francs. It therefore appeared from the invoice when taken together that the sum of 8,310.60 francs was intended to express the net *per se* valuation of the hats, and that the 1,085.25 francs were the charges thereon. The first two items of these charges were nondutiable, while the last item, namely, "packing, 972 francs," was dutiable in character.

It may be stated at this point that the merchandise was afterwards in due course appraised, reappraised, and re-reappraised, and that the *per se* value thereof was found to be 8,310.60 francs.

The importer entered the merchandise upon the consular invoice above described. In his declaration, therefore, he should have stated the *per se* value of the merchandise to be 8,310.60 francs, in accordance with the statements of the invoice. Instead of this, however, the entrant erroneously deducted from that amount the sum of 113.25 francs, being the nondutiable charges above set out, leaving a net valuation of only 8,197.35 francs. This deduction was of course made by the entrant upon the theory that the nondutiable charges in question had been included within the given total of 8,310.60 francs, whereas, as already stated, these charges in fact had not been included within that total. It is accordingly conceded by the importer that the declared valuation was incorrect to the extent of 113.25 francs, and that the merchandise thereby became liable to additional duties proportionate to that amount. Such additional duty was assessed

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by the collector, and his action to that effect is not contested by the importer.

The collector, however, held the merchandise to be liable to other additional duties, in addition to those just referred to, and these furnish the real issue in the present case. As has been stated, the consular invoice stated the value of the merchandise to be 8,310.60 francs, which amount was afterwards adopted by the appraisers as the *per se* value of the goods. But as has already been stated, the invoice not only set out the foregoing value of 8,310.60 francs, but also appended thereto a list of three items of charges, namely, carriage to Genoa, 100 francs; consular fee, 13.25 francs; and packing, 972 francs. The first two charges were nondutiable in character, but the third item should be added in for assessment. In the declaration the entrant stated the value of the merchandise to be 8,310.60 francs, less 113.25 francs, viz, the sum of the two nondutiable charges, whereby the sum of 8,197.35 francs was reached as the apparent net value of the merchandise. The factor of confusion which raises the present issue is found in the fact that the entrant made no mention whatever in his declaration of the dutiable charge of 972 francs for packing. That is to say, the entrant stated 8,197.35 francs as the apparent net value of the merchandise, after deducting the two nondutiable charges, but he failed to state specifically in the declaration whether the dutiable charge of 972 francs for packing was or was not included therein.

The collector held that the declaration should be interpreted as meaning that the dutiable charge of 972 francs for packing was in fact included within the stated valuation of 8,197.35 francs, and that accordingly the *per se* value of the merchandise was thereby impliedly stated as 7,225.35 francs. Accordingly, the collector held that the entrant had not only directly understated the *per se* value of the merchandise in the sum of 113.25 francs in his declaration, but had also by fair interpretation impliedly understated the *per se* value in the additional sum of 972 francs. Acting upon this interpretation the collector assessed additional duties upon the appraised value of the merchandise proportionate to an alleged undervaluation in the sum of 113.25 francs plus 972 francs.

The importer conceded the validity of such additional duties as are proportionate to the express undervaluation of the merchandise in the sum of 113.25 francs, but he protested against those additions which were based upon the implied undervaluation of 972 francs.

The protest was submitted to the Board of General Appraisers and was sustained, from which decision the Government appeals.

We think that the decision of the board rightly follows from the facts which have already been stated. The declaration of the entrant was attached to the consular invoice, which fairly showed that the

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valuation of 8,310.60 francs as therein set out was intended to express the *per se* valuation of the merchandise, exclusive of the 972 francs of dutiable packing charges. Accordingly, the valuation of 8,310.60 francs, when adopted into the declaration, would naturally be understood to be the *per se* value of the merchandise. The entrant himself, however, negatived this implication to the extent of 113.25 francs when he erroneously deducted that sum from the 8,310.60 francs in the declaration. This error, however, had no relation to the packing charge of 972 francs, and did not lead to the conclusion that this item also was intended to be deducted from the 8,310.60 francs in order to find the *per se* value of the merchandise. The fact that the entrant in his declaration specifically deducted 113.25 francs from the stated value of the merchandise is quite consistent with the interpretation that the residue was the net *per se* value thereof. This residue, namely, 8,197.35 francs, should therefore be interpreted as the entrant's declaration of the net *per se* value of the merchandise. This sum, as already set out, was only 113.25 francs less than the appraised value of the merchandise; consequently the finding of the collector that the declaration was also 972 francs less than the appraised value was incorrect. It is true that the declaration might have been more definite and specific in respect to the charge in question, but, on the other hand, no effort was made therein to deceive or mislead the collector, nor could the figures, when taken together, have had that effect. Under these circumstances, we think that the collector erred in the interpretation which he placed upon the declaration in so far as the packing charges were concerned, and the decision of the board reversing the assessment to that extent is *affirmed*.

(T. D. 36150.)

Drawback on cigarette tips.

Drawback on cigarette tips manufactured by L. Mundet & Son (Inc.), of New York, N. Y., with the use of imported cork paper.

TREASURY DEPARTMENT, *February 10, 1916*.

SIR: Drawback is hereby allowed under the provisions of paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on cigarette tips, individual or in rolls or bobbins, manufactured by L. Mundet & Son (Inc.), of New York, N. Y., with the use of imported cork paper.

The allowance shall not exceed the quantity of imported cork paper used in the manufacture of the exported cigarette tips, as shown by the sworn statement of the manufacturers, dated January 26, 1916, which is transmitted herewith for filing in your office.

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Drawback may be allowed under these regulations on cigarette tips exported on or after December 16, 1915.

Respectfully, ANDREW J. PETERS,
(46668.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36151.)

Regulations concerning the issue of duplicate Treasury warrants Treasurer's checks, and interest checks.

[Circular No. 54.[1]]

TREASURY DEPARTMENT,
OFFICE OF THE TREASURER OF THE UNITED STATES,
Washington, February 7, 1916.

The following regulations in relation to the issue of duplicates of Treasury warrants, Treasurer's checks, and interest checks are hereby established:

Advice of nonreceipt or loss.—In the event of the nonreceipt or loss of a warrant or check, the owner, to better protect his interest, should in writing notify the Treasurer of the United States, describing the warrant or check, giving if possible its date, number, and amount, and requesting that payment of same be stopped, preliminary to the issue of a duplicate.

Issue of duplicate.—Upon the receipt of said request, payment of the original will be stopped, and, upon satisfactory proof of its nonreceipt or loss, a bond of indemnity will be prepared in this office and transmitted for execution. Upon the return of the bond executed according to instructions, and its approval by the Comptroller of the Treasury, a duplicate will be issued, provided 90 days have elapsed from the date of the original.

Where the principal of a lost or destroyed warrant or check does not exceed $20, the Treasurer may, in his discretion, waive a bond of indemnity and affidavit, provided the applicant shall furnish a written statement giving the information required by affidavit in other cases.

Affidavit.—In order to procure the issue of a duplicate the party in interest must furnish the Treasurer with an affidavit, except in cases mentioned in the foregoing paragraph where bond of indemnity and affidavit are waived, giving the name and residence of the applicant in full, describing the warrant, or check, and its indorsements, showing his interest therein, and detailing the circumstances attending its loss. The affidavit must be made and signed before an officer

[1] Supersedes Department Circular No. 18 of March 1, 1904.

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authorized to administer oaths generally, and he must certify that he administered the oath.

Recovery of original.—In the event of the recovery of the original warrant, or check, after the issue of a duplicate, it should be forwarded to the Treasurer of the United States for cancellation and filing with the bond.

Bonds of Indemnity.

GENERAL INSTRUCTIONS.

Names.—The Christian names must be written in the body of the bond in full, and so signed to the bond.

Witnesses.—Each signature must be made in the presence of two persons, who must sign their names as witnesses.

Seal.—A seal of wax or wafer must be attached to each signature.

Residence.—The residence and post-office address (giving number and street, where the residence is so designated) of the principal and of each surety and witness must be given.

Penalty.—The penalty of the bond should be in even dollars, and at least double the amount of the lost warrant or check, but in no case less than $50.

Sureties.—The sureties to the bond must be two in number and citizens and residents of the United States.

When a surety is a woman, it should appear whether or not she is married or single, as a married woman will not be accepted as surety.

In cases where the payee or party in interest is not a citizen of the United States, the bond may be acknowledged by the principal before a United States minister, chargé, consul, vice consul, or commercial agent. The official seal, where there is one, should in all cases be affixed; and where there is none, this fact should be made known and attested.

Certificates as to sureties.—The sufficiency of the sureties must be certified by one of the following-named officers: A judge of a United States court, United States commissioner, United States district attorney, United States marshal, collector of internal revenue, United States naval officer, collector or surveyor of customs, Assistant Treasurer of the United States, under his official designation and seal, if there be one; a clerk of a court of record, under the seal of the court; a president or cashier of such national banks only as are designated depositaries of the United States, under his official designation and the seal of the bank; or a commissioned officer of the Army or Navy of the United States.

Corporation as principal.—If a corporation is the principal, the blank in the first and second lines of the bond must be filled thus: "The ——— (giving name of corporation), by ——— ——— (an officer duly authorized by resolution of the board of directors)." The bond must be signed for the corporation by the proper officer

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thus: "The ——— (giving name of corporation), by ——— ——— (the authorized officer)," and the seal of the corporation must be affixed; a copy of the resolution of the board of directors showing authority for the officer to execute the bond on behalf of the corporation, certified to be correct by the secretary of the board (who, for this purpose, must be some other officer than the officer authorized to execute the bond), under the seal of the corporation, must be returned with the bond, and must show whether action was taken at a regular or a special meeting of the board; if the latter, that all of the directors were notified of the time and place of meeting, and that a quorum was present.

Unincorporated companies, etc., as principal.—Where an unincorporated company, society, lodge, or association is principal, a copy of the resolution of the proper authorities, under seal (if there be one), authorizing an officer or officers to execute the bond, must be attached thereto. If the company have no seal, the resolution should be certified as correct by a notary public or other competent officer under his seal.

Miscellaneous.—If the party in interest is an individual doing business under a company title, he must make affidavit that he is the sole owner of the business and execute the bond individually as sole owner of the company named. Where a copartnership is doing business under a company title, an affidavit of at least two members will be required, naming the member who is authorized to execute the bond. If a firm is the party in interest, the names of the individual members should be inserted as the principals of the bond, thus: "John Jones and James Smith, composing the firm of Jones & Smith," and the bond should be signed by each of them.

JOHN BURKE,
Treasurer of the United States.

Approved:
W. W. WARWICK,
Comptroller of the Treasury.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 36152.)

Drawback on "Hudson seal" skin.

Drawback on "Hudson seal" skin manufactured by C. & E. Chapal Freres & Cie. and the Cimiotti Unhairing Co., of Brooklyn, N. Y., with the use of imported muskrat skins or plates for the account of Revillon Freres, of New York, N. Y.

TREASURY DEPARTMENT, *February 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(articles 855 to 881 of the Customs Regulations of 1915) on "Hudson seal" skin, manufactured by C. & E. Chapal Freres & Cie. and the Cimiotti Unhairing Co., of Brooklyn, N. Y., with the use of imported muskrat skins and plates for the account of Revillon Freres, of New York, N. Y.

Records shall be kept by the parties named, which will show, in the case of each lot of "Hudson seal" skin manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, and the number and identity of imported muskrat skins or plates appearing therein. A sworn abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

The allowance shall not exceed the number of imported muskrat skins or plates appearing in the exported "Hudson seal" skin, as shown by the abstract from the manufacturing record.

The sworn statements of C. & E. Chapal Freres & Cie. and the Cimiotti Unhairing Co., and Revillon Freres, dated January 26 and 27, 1916, respectively, are transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on "Hudson seal" skin exported on or after December 23, 1915.

Respectfully, ANDREW J. PETERS,
(102911-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36153.)

Drawback on spark plugs.

Drawback on spark plugs and center cores for spark plugs manufactured by the Rajah Auto-Supply Co., of Bloomfield, N. J., with the use of imported porcelain tubes.—T. D. 28068 of April 8, 1907, revoked.

TREASURY DEPARTMENT, *February 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on spark plugs and center cores for spark plugs manufactured by the Rajah Auto-Supply Co., of Bloomfield, N. J., with the use of imported porcelain tubes.

The allowance shall not exceed one imported porcelain tube for each spark plug or spark plug center core exported.

The sworn statement of the manufacturers, dated January 28, 1916, is transmitted herewith for filing in your office.

T. D. 28068 of April 8, 1907, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(44815.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36154.)

Drawback on foil.

Drawback on tin-foil and paper-backed foil manufactured by the Conley Foil Co., of New York, N. Y., with the use of imported lead.—Department's unpublished letter of August 5, 1899, T. D. 23329 of October 24, 1901, and T. D. 24762 of November 6, 1903, revoked.

TREASURY DEPARTMENT, *February 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on tin-foil and paper-backed foil manufactured by the Conley Foil Co., of New York, N. Y., with the use of imported lead.

A manufacturing record shall be kept, which will show, in the case of each lot of tin-foil manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity (weight and dimensions) of tin-foil produced, the quantity, value, and identity of the imported lead, the quantity of other materials appearing in the finished foil, and the quantity and value of lead dross resulting. A record shall also be kept, which will show, in the case of each lot of paper-backed foil manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity (dimensions) of paper-backed foil produced, and the quantity and identity of the tin-foil appearing therein. Sworn abstracts from such manufacturing records shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported lead appearing in the exported tin-foil or paper-backed foil, as shown by the abstracts from the manufacturing records prescribed above, with an addition to compensate for the lead dross resulting during manufacture, the allowance for such waste to be reduced according to the quantity of imported lead which the value of the dross will replace.

The sworn statement of the manufacturers, dated December 2, 1915, is transmitted herewith for filing in your office.

Department's unpublished letter of August 5, 1899, T. D. 23329 of October 24, 1901, and T. D. 24762 of November 6, 1903, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(89324.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36155.)

Ship's equipment—Wireless apparatus.

Appeal directed from decision of the Board of United States General Appraisers of January 12, 1916, G. A. 7841 (T. D. 36078), involving the classification of certain wireless apparatus for a vessel.

TREASURY DEPARTMENT, *February 11, 1916.*

SIR: The department acknowledges the receipt of your letter of the 5th instant, relative to the decision of the Board of United States

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General Appraisers of January 12, 1916, G. A. 7841 (T. D. 36078), wherein the board held that certain wireless apparatus for vessels was not dutiable under paragraph 167 of the tariff act of 1913, but was free of duty under the provisions of subsections 5 and 6 of paragraph J of section 4 of that act.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(93000-12-1.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36156.)

Hydroaeroplanes as vessels, etc.—Free entry of equipment.

Hydroaeroplanes held to be "vessels" within the meaning of subsections 5 and 6 of paragraph J of section 4, tariff act of 1913, and compasses for hydroaeroplanes to be articles of outfit and equipment, and entitled to free entry as such, subject to compliance with the regulations in T. D. 34150. Aeroplanes other than hydroaeroplanes are not such "vessels."

TREASURY DEPARTMENT, *February 10, 1916.*

SIR: Inquiry has been made as to the right to free entry of compasses to be used on aeroplanes of the United States Navy.

The department is of the opinion that hydroaeroplanes constitute "vessels" within the meaning of that term as used in subsections 5 and 6 of paragraph J of section 4 of the tariff act of October 3, 1913, and that compasses for hydroaeroplanes constitute articles of outfit and equipment, and are entitled to free entry as such, subject to compliance with the regulations in T. D. 34150.

Aeroplanes other than hydroaeroplanes are not deemed to be "vessels" within the meaning of the said provisions of law.

Respectfully, ANDREW J. PETERS,
(93000-12-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36157.)

Sale of blank forms—Remittances therefor.

TREASURY DEPARTMENT, *February 12, 1916.*

To collectors of customs and others concerned:

Importers, brokers, and others desiring to purchase from customs officers forms listed for sale will be required to make remittances

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therefor in cash or by postal or express money order. Customs officers are, however, authorized to accept certified checks which can be cashed or deposited without expense for exchange or otherwise or to which is added in each case a sufficient amount to cover any such expense.

(93120.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36158.)

Drawback on chewing gum.

Drawback on chewing gum manufactured by the American Chicle Co., of Rochester, N. Y., with the use of imported refined chicle and refined sugar produced with the use of imported raw sugar.—T. D. 29291 of October 9, 1908, and T. D. 30105 of November 12, 1909, revoked.

TREASURY DEPARTMENT, *February 12, 1916.*

SIR: Drawback is hereby allowed under the provisions of paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on chewing gum designated as "Sen-Sen Chewing Gum" and "After Dinner Pepsin Gum," manufactured by the American Chicle Co., of Rochester, N. Y., with the use of imported refined gum chicle and refined sugar produced with the use of imported raw sugar.

A manufacturing record shall be kept, which will show, in the case of each lot of chewing gum manufactured for exportation with benefit of drawback, the lot number, date of manufacture thereof, quantities and identity of refined sugar and imported refined gum chicle used, and the quantity and brand name of the gum produced. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of refined sugar and imported gum chicle which may be taken as a basis for the allowance of drawback shall not exceed the quantities used in the manufacture of the exported chewing gum, as shown by the abstract from the manufacturing record, with a maximum of the quantity shown in the sworn statement of the manufacturers, dated December 18, 1915, which is transmitted herewith for filing in your office.

Supplemental sworn schedules showing changes in the quantities of refined sugar and imported chicle used or covering other brands of chewing gum may be filed, and upon verification of such supplemental sworn schedules, drawback may be allowed on the chewing gum covered thereby.

T. D. 29291 of October 9, 1908, and T. D. 30105 of November 12, 1909, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(98544.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

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(T. D. 36159.)

Drawback on canned pears.

Drawback on canned pears manufactured by the Gibbs Preserving Co., of Baltimore, Md., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *February 12, 1916.*

SIR: Drawback is hereby allowed under the provisions of paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on canned pears manufactured by the Gibbs Preserving Co., of Baltimore, Md., with the use of refined sugar produced in whole or in part from imported raw sugar.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback may equal the quantity appearing in the exported canned pears, as shown by the sworn statement and schedule of the manufacturers, dated January 31, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules covering other brands of canned pears may be filed, and upon verification of such supplemental schedules drawback may be allowed on the articles covered thereby.

Respectfully, ANDREW J. PETERS,
(103746-20.) *Assistant Secretar*
COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 36160—G. A. 7851.)

Metal gauges—Models.

Metal gauges which have cut into them various sizes of threads required to be cut into tools used in drilling oil wells are properly dutiable under paragraph 167, tariff act of 1913, as manufactures of metal not specially provided for, rather than free of duty under the provision in paragraph 551 of said act for "models of inventions and of other improvements in the arts, to be used exclusively as models and incapable of any other use." While these gauges serve as guides for making copies or duplicate master gauges, they also are screwed and fitted into such copies with a view to testing the accuracy of the threads cut into the latter.

United States General Appraisers, New York, February 4, 1916.

In the matter of protest 741724 of Oil Well Supply Co. against the assessment of duty by the collector of customs at the port of Pittsburgh.

[Affirmed.]

George L. Roberts for the importers.

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

FISCHER, *General Appraiser:* Certain metal gauges, described on the pro forma invoice as "boring material models," were classified

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by the collector as manufactures of metal not specially provided for, and duty was levied thereon accordingly at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913. They are claimed by the importers to be properly entitled to free entry under the following paragraph of said act:

551. Models of inventions and of other improvements in the arts, to be used exclusively as models and incapable of any other use.

At the time of the hearing, one of the witnesses who appeared herein on behalf of the importers was asked if he had received refunds on articles heretofore imported similar in character to those now in question. He replied in the affirmative. His counsel thereupon cited the protest number of the case in which refunds were made, together with the date of the decision of the board, but he failed to introduce in evidence as part of the record in this case either the testimony or the samples upon which the said decision was based.

Under the ruling of the United States Court of Customs Appeals in the case of United States *v.* Eytinge & Co. (4 Ct. Cust. Appls., 266; T. D. 33486) this board is precluded from considering or applying its former decision cited by counsel as covering the same class of merchandise, unless the record or the samples upon which the said decision was predicated has been incorporated in and made part of the record in the case now under consideration. As before stated, this has not been done in the case at bar, and consequently we now have before us neither the record nor the sample in the decided case, nor indeed any evidence whatever which would tend to show that the articles involved in the former and in the present cases are identical in character.

No sample of the merchandise in question has been offered in evidence herein. The testimony, however, introduced on behalf of the importers is sufficient to enable us to determine the proper classification of the articles under the law.

Moreover, the language employed by Congress in framing the provisions of paragraph 551 clearly indicates the precise nature and charactor of the articles to be accorded free entry thereunder. They must be (1) models of inventions or models of improvements in the arts, and (2) they must be used exclusively as such models and be incapable of any other use.

In what respect, if any, do the articles in question respond to these statutory requirements? Are they models of inventions or of improvements in the arts? On this point we quote from the testimony of the manager and the superintendent, respectively, of the importing company, the only witnesses who appeared herein.

Witness Anderson:

Q. These are not inventions?—A. No, sir; just models to enable us to turn threads.

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Witness Mapes:

Q. You agree with the previous witness that this is not an invention?—A. It is not an invention.

Witness Anderson:

Q. Do you claim these to be characterized as improvements in the art?—A. None whatever.

Witness Mapes:

Q. You also agree that it has been in use; the principle involved here has been in use except for the size?—A. The size is likely to change—the size—anybody can change the number of threads.

Q. But the principle is the same?—A. Same as has been used for 25 years.

Ordinarily, reference to a certain article as a model of an invention, or as a model of an improvement in the arts, naturally presupposes or suggests to the mind that the object purported to be represented by such model is itself either an invention or an improvement in the arts, otherwise the words would not convey their plain and obvious meaning. In view of this self-evident fact, the contention of the importers that these gauges are entitled to be treated as models of inventions or as models of improvements in the arts is defeated by the positive testimony of their own witnesses.

Moreover, it appears of record that these imported gauges are returned abroad after copies or duplicates thereof have been made by the importers, and that in the making of such copies or duplicates it is necessary to test the latter for accuracy of the threads by screwing into them the imported gauges. To that extent, at least, the imported gauges have a practical use other than as models. These gauges are composed of the same metal, and the threads cut in them are precisely of the same size as those which are cut into the drilling tools and the extension parts thereof manufactured by the Oil Well Supply Co. for use in drilling oil wells. In fact, at each of the joints, in order to secure accuracy and uniformity in the threads, the same are tested by having the imported gauge screwed into them. As characterized by one of the witnesses, this imported article serves the purpose of a "working gauge." They are, therefore, clearly not of the class of models contemplated by paragraph 551.

What constitutes a model in the tariff sense has been plainly indicated by this board in its decision published as G. A. 7182 (T. D. 31351) in the matter of the Columbia Phonograph Co. That case involved so-called master records which were claimed to be properly entitled to free entry as models of improvements in the arts under the provisions of paragraph 629 of the act of 1909, of which paragraph the present paragraph 551 is a literal reenactment. The board overruled the protest, and in the course of its opinion said:

It is obvious that Congress in enacting this paragraph has qualified the word "models" by language that clearly indicates the character of the articles to be accorded

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free entry as such. The models contemplated by the legislative mind are undoubtedly those that had for many years been regarded by the Treasury Department as limited to such merchandise as *miniature* examples that *can not be used for any other purpose than to illustrate the articles of which they are claimed to be models.* (T. D. 7479). In G. A. 1145 (T. D. 12373) the board, in holding that cornice and frieze patterns in plaster, designed and fitted for use in making the several varieties of decorations or ornaments mentioned, were not entitled to free entry as models, concurred in the practice of the Treasury Department in regarding the pertinent provision in the act of 1883 as applicable to such miniature models and the like as were intended only to *illustrate* the articles represented thereby and which were not *in themselves* intended and fitted for use in making new articles suitable for practical use.

Paragraph 616 of the act of 1897 provided free entry for—

Models of inventions and of other improvements in the arts, including patterns for machinery, but no article shall be deemed a model or pattern which can be fitted for use otherwise.

In construing this paragraph in the case of Butler Manufacturing Co., the board held. in G. A. 4838 (T. D. 22724), that certain wood carvings imported to be used as patterns for purposes of reproduction, but fit for use otherwise, were not entitled to free entry under said paragraph. And to show the necessity of interpreting strictly the intent of Congress as expressed in the statute, the board said:

To hold that such articles are models of improvements in the arts would be to permit free entry as models of every new variety of manufacture known to commerce; for instance, a new design of furniture, a new painting or statue, a new book or play, a new design of lace or cloth, and a thousand other productions could be claimed with equal force to be models or patterns intended as guides for the purpose of reproduction.

That it was the evident intention of Congress to even further restrict the class of articles to be granted free entry as models of inventions and of improvements in the arts is made manifest by the omission from the act of 1909 and from the present act of all reference to "patterns of machinery" for which free provision was made in the act of 1897. As it now stands, the provision covers models of inventions and of other improvements in the arts, to be used exclusively as models and incapable of any other use, and the articles here in question are decidedly not of that class.

The protest is therefore overruled and the decision of the collector is affirmed.

(T. D. 36161—G. A. 7852.)

Manufactures of metal-coated paper.

Completed articles composed of metal-coated paper, die cut in the form of strips 2½ feet long and one-fourth of an inch wide, and embossed with a small ornamental design and with the letters "P. & T.," are properly classifiable under paragraph 324 of the act of 1913 as manufactures of metal-coated paper, as classified by the collector, rather than under the provision in paragraph 332 of said act for "papers * * *

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cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, or other forms, * * * plain, decorated, embossed, or printed, except by lithographic process," as claimed by the importers.

United States General Appraisers, New York, February 4, 1916.

In the matter of protest 781866 of Kupfer Bros. Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*Jacob L. Klingaman* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., nor participating.)

FISCHER, *General Appraiser:* The merchandise in question is invoiced as "gold borders." It consists of metal-coated paper cut into strips, each about 2½ feet long and one-quarter of an inch wide, embossed with a small ornamental design and with the letters "P. & T." The strips in the representative sample in evidence are 12 in number and are attached to each other at each end.

Duty was levied on said articles at the rate of 35 per cent ad valorem under the provision in paragraph 324 of the act of 1913 for "papers wholly or partly covered with metal leaf * * * and all other articles composed wholly or in chief value of any of the foregoing papers, not specially provided for in this section."

The protest alleges that the merchandise is properly dutiable at the rate of 25 per cent ad valorem under the provision in said paragraph 324 for "papers wholly or partly covered with metal leaf," or at the same rate under the provision in paragraph 332 of said act for "papers * * * cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, or other forms, * * * plain, decorated, embossed, or printed, except by lithographic process."

The uncontradicted evidence in the case consists of the testimony of the United States examiner at the port of New York who passed the particular articles in question, and who was the only witness who appeared herein. It is thereby conclusively shown that said articles are both die cut and embossed, and that they are employed for decorating or for fancy wrapping around candy boxes. The ribbon-like appearance of the sample before us would seem to corroborate the testimony of the witness that said articles are designed for use as fancy wrappings around candy boxes. However, there is absolutely no proof whatever offered to substantiate the correctness of the invoice description of the merchandise as "gold borders," or that the same is so commercially known and recognized.

Moreover, we are fully satisfied from an examination of the sample in evidence that the articles represented thereby are more than mere

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forms which have been die cut and embossed from metal-coated paper; they are rather, in our judgment, completely finished manufactured articles which are susceptible of immediate use in their imported condition, merely requiring that they be detached at each end. In the use for which they were evidently designed they may be said to resemble pieces of silk ribbon which are commonly employed as ornamental wrappings for candy boxes.

This testimony effectually disposes of the contention here made by the importers that the articles, although subjected to certain manufacturing processes, have nevertheless not lost their identity as metal-coated paper, and that they should be so classified for tariff classification purposes.

In the case of Universal Shipping Co. *v.* United States (4 Ct. Cust. Appls., 245; T. D. 33479), which arose under the act of 1909, certain "blanks" in the form of squares and circles cut from sheets of aluminum were held by the Court of Customs Appeals to be no longer classifiable as aluminum in sheets, but to be dutiable rather as "articles composed of aluminum partly or wholly manufactured." The court there said—

> That these articles were once in the form of sheets is apparent. But they have been advanced beyond that state, and have become articles or wares composed wholly of aluminum, partly manufactured.

In the case at bar not only have the articles been advanced beyond the state where they might have been considered as consisting of papers wholly or partly covered with metal leaf, but their imported condition shows that they have reached and passed the final stage of manufacture required to transform them into fully finished articles ready, as imported, for the use for which they were ultimately intended and designed. This condition, therefore, controls the classification of the articles, and having passed the final stage of manufacture they must be deemed to be completed articles composed wholly of metal-coated paper, and as such they are specifically provided for in paragraph 324 of the present act, as classified by the collector.

This conclusion is fully supported by the decision of the United States Court of Customs Appeals in the case of United States *v.* Fuld (4 Ct. Cust. Appls., 234; T. D. 33476), which construed a proviso to paragraph 415 of the act of 1909 which was framed in language substantially similar to that employed in the first part of the present paragraph 332, the pertinent provision herein relied upon by the importers. In that case Judge De Vries, in his opinion, said:

> We agree with the board in its unpublished opinion in Abstract 24233 (T. D. 31070), wherein, speaking of this proviso, it stated:
>
> It is apparent to us that the proviso cited has no application to printed matter in the form of private mailing or souvenir post cards. The proviso has reference to

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forms of paper *produced* by embossing, cutting, or stamping, rather than to completed articles to some of which any of the processes referred to may have been applied as an additional feature of ornamentation.

This judicial interpretation of the extent and scope of the words "or other forms" in said proviso was approved by the same tribunal in its decision in the case of United States *v.* Wyman (4 Ct. Cust. Appls., 411; T. D. 33851), which involved embossed paper ornaments composed in chief value of metal-coated paper. In fact, in the latter case the court emphasized the effect of the further qualifying language contained in said proviso, which restricted the forms to such as may be composed of paper "plain or printed, but not lithographed," and added:

But there is nothing in this language that imports that metal-coated papers, which are clearly subject to the terms of paragraph 411, should be taken out of that paragraph and held dutiable under paragraph 415. We think the latter paragraph should be held to apply only to papers plain or printed but not lithographed.

It is here contended, however, that the decision of the court in the Wyman case is not applicable to the present merchandise, because that decision construed a provision in the act of 1909 the wording of which has been materially changed in the present act. This change, the importers allege, consists in the omission from the pertinent provision in paragraph 332 of the words "plain or printed but not lithographed," which were contained in the proviso to paragraph 415 of the last preceding act. That proviso reads as follows:

Provided, That paper embossed, or cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, bands, strips, or other forms, or cut or shaped for boxes, plain or printed but not lithographed, and not specially provided for in this section, shall be dutiable at 35 per centum ad valorem * * *.

The present provision in paragraph 332 reads:

Papers or cardboard, cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, or other forms, and all post cards, not including American views, plain, decorated, embossed, or printed, except by lithographic process, * * * 25 per centum ad valorem.

As we read the latter provision the words "plain, decorated, embossed, or printed, except by lithographic process," are intended to and do relate back and qualify all of the preceding language and not merely the immediate antecedent post cards, as claimed by the importers. Indeed, this construction is unavoidable if we are to give to the language of the paragraph an effect and meaning which will be at least consistent with that of other provisions of the same schedule.

We find in paragraph 324—which by the way is the paragraph under which the articles here in question have been classified—a provision which imposes duty at the rate of 40 per cent ad valorem upon papers with coated surface or surfaces suitable for covering

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boxes, whether or not embossed or printed except by lithographic process.

Now, to hold as sound the contention of the importers here made that the initial words in paragraph 332, "papers or cardboard," are absolutely unrestricted and unmodified by any qualifying language descriptive of the quality or character or class of papers or cardboard intended to be covered, would necessarily mean that any or all of the coated box papers provided for in paragraph 324, even though they be embossed or printed, may be imported in the form of initials, monograms, lace, borders, or other forms, produced by cutting, die cutting, or stamping, and in such condition would be subject to a duty of but 25 per cent ad valorem, whereas the same class of papers, if imported in the form of sheets or rolls, by virtue of paragraph 324 would be required to be classified for duty at the rate of 40 per cent ad valorem.

Such a construction would be clearly inconsistent with the well-established tariff policy which ordinarily contemplates the imposition of higher rates of duty on imported merchandise in proportion as the articles may be advanced in condition and value as a result of manufacturing processes.

Following the decision of the Court of Customs Appeals in the Wyman case, *supra*, we are of opinion that the provision in paragraph 332 does not embrace completed articles, nor those composed in chief value of surface-coated papers; and we therefore overrule the protest and affirm the decision of the collector.

(T. D. 36162—G. A. 7853.)

Taxus baccata.

TAXUS BACCATA—NURSERY STOCK—"CONIFEROUS EVERGREEN SEEDLINGS."

Taxus baccata, while an evergreen seedling, is not coniferous, and is therefore excluded from the provision in paragraph 595, tariff act of 1913, which grants free entry to "coniferous evergreen seedlings."

United States General Appraisers, New York, February 4, 1916.

In the matter of protest 784205 of C. B. Richard & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Curie, Smith & Maxwell (*Herbert N. Wallace* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The goods in question in this case are invoiced as *Taxus baccata.* They were assessed with duty at 15 per

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cent ad valorem under paragraph 211, tariff act of 1913, as nursery stock. They are claimed to be free of duty under paragraph 595, which grants free entry to "coniferous evergreen seedlings."

This growth is what is known as the yew tree. While it is an evergreen seedling, we are unable to find that it is coniferous, or that it bears a cone. Not being of the cone-bearing variety, we are unable to find that it is provided for under paragraph 595. The protest is therefore overruled.

(T. D. 36163—G. A. 7854.)

Paprika.

1. PAPRIKA—SPANISH PIMENTON—CAPSICUM OR RED PEPPER.

Spanish pimenton, or Spanish paprika, being the ground pod of a species of *Capsicum annuum*, is dutiable under the provision in paragraph 235, tariff act of 1913, for "capsicum or red pepper," rather than under the general provision in the same paragraph for "all other spices not specially provided for."

2. SAME—COMMERCIAL MEANING—CONGRESSIONAL INTENT.

While the rule is that commercial designation, if properly established, will prevail over the common name of an article, this rule is not applicable when Congress has shown an intent to disregard a commercial designation. Such intent is shown by the reenactment of a provision for "capsicum or red pepper" in paragraph 235, tariff act of 1913, a similar provision under previous tariff acts having been held to cover a variety of capsicum known commercially as "paprika."

3. SAME—"ALL OTHER SPICES."

Paprika being specifically described in paragraph 235 as capsicum or red pepper, its classification under the provision in the same paragraph for "all other spices" is prohibited by the language of the statute. The importer not having shown that paprika is otherwise classifiable, we hold it reverts to the clause where it is specifically described.

United States General Appraisers, New York, February 7, 1916.

In the matter of protests 745706, etc., of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

[Affirmed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, *Leland N. Wood*, and *Samuel Isenschmid*, special attorneys), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The commodity in question in these cases is invoiced either as "pure Spanish pimenton" or "pure Spanish paprika." It is the dried ground pod of the Spanish red pepper, one variety of *Capsicum annuum*. In appearance it is a fine ground substance, of a deep red color, and has a somewhat bitter peppery taste.

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A similar article is grown in Hungary, though not so mild as the Spanish variety; and there is still another, stronger and more fiery pepper, from which cayenne pepper is made.

The importations in question were classified and assessed with duty at 1 cent per pound and 20 per cent ad valorem under paragraph 235, tariff act of 1913. Said paragraph is in the following language:

235. Spices, unground: Cassia buds, cassia, and cassia vera; cinnamon and cinnamon chips; ginger root, unground and not preserved or candied; nutmegs; pepper, black or white; capsicum or red pepper, or cayenne pepper; and clove stems, 1 cent per pound; cloves, 2 cents per pound; pimento, ¾ of 1 cent per pound; sage, ½ cent per pound; mace, 8 cents per pound; Bombay or wild mace, 18 cents per pound; ground spices, in each case, the specific duty per pound enumerated in the foregoing part of this paragraph for unground spices, and in addition thereto a duty of 20 per centum ad valorem; mustard, ground or prepared, in bottles or otherwise, 6 cents per pound; all other spices not specially provided for in this section, including all herbs or herb leaves in glass or other small packages for culinary use, 20 per centum ad valorem.

The importers make the following claim:

We claim that the last part of paragraph 235 is not applicable to this merchandise, as it is not a spice in the unground state, but a vegetable, and does not become a spice until ground. We claim the merchandise is dutiable at 1 cent per pound only under paragraph 235 or at 20 per cent under the same paragraph.

It is somewhat difficult to pick out a definite claim from the protest in view of the testimony which has been given and the way the paragraph reads. It will be noted that paragraph 235 provides specifically for "capsicum or red pepper." Then follows the language:

* * * Ground spices, in each case, the specific duty per pound enumerated in the foregoing part of this paragraph for unground spices, and in addition thereto a duty of 20 per centum ad valorem; * * *.

And the last provision in the paragraph reads:

* * * All other spices not specially provided for in this section, including all herbs or herb leaves in glass or other small packages for culinary use, 20 per centum ad valorem.

It would seem that the claims made are, first, that it is a vegetable; second, that it is a spice, unground, dutiable at 1 cent per pound only under paragraph 235; and, third, that it is included in the provision for "all other spices not specially provided for" at 20 per cent ad valorem.

If we are to consider the claim that it is a vegetable, we have to say that it is not specified under which paragraph of the schedule the claim is made. At all events, a substance of this kind would not be considered a vegetable. We therefore overrule any claim which seems to have been made that it is such.

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With reference to the claim for duty at 1 per cent per pound under paragraph 235, it will be noted that this applies to unground spices only. There is no question but that this is ground. Therefore that claim is overruled.

Some of the protests make additional claims under paragraphs 27 and 385, and also claim for a discount of 5 per cent under the provisions of subsection 7 of paragraph J of section 4, but these claims are overruled as unsupported.

We think the only question remaining is whether this substance is dutiable as assessed or under the provision for "all other spices." At the hearing the attention of the importers was directed entirely to the question whether by commercial designation this was not excluded from classification under the first part of the paragraph, and if so, whether it should not be assessed under that part of the paragraph which provides for "all other spices." The claim is, and we think it is substantiated, that this commodity is bought and sold and known in the trade and commerce of the United States as paprika. Paprika is the Hungarian word for pepper. It is not claimed that paprika is mentioned in the tariff act. It becomes necessary, therefore, in order to maintain the point claimed, to prove that the commodity is definitely, uniformly, and generally known as paprika in the trade and commerce of the United States and that it has been excluded from the term "capsicum or red pepper" by commercial usage. In other words, that the term "capsicum or red pepper" has been so far distorted from its common or well-known meaning that this commodity, notwithstanding it is botanically and scientifically pepper and properly named as being one variety of capsicum or red pepper, has been excluded for tariff purposes from that designation. Paprika not being enumerated in the statute, if it is excluded from classification under its general and well-known appellation, it will have to be shown by the importers to be dutiable under some other classification provided for in the statute. They have attempted to do this by showing that it is a spice and dutiable under the provision for "all other spices." There is some confusion as to whether this should be termed a spice. The testimony of the importers is contradictory upon that point, at least two witnesses denying that it is a spice; but the statute seems to have considered it such, and the claim of the importers, when boiled down, is that it is a spice. We think, had no question been raised as to its commercial designation, it would be termed a spice, and for the purposes of this case will be so considered.

The general rule is that commercial designation will prevail, if properly established, over the common name of an article. It is presumed that Congress legislates with reference to the name by which

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an article is known in the commerce and trade of the country at the time the act is passed. There are exceptions, however, to this rule, in cases where Congress has manifestly shown an intent to disregard a commercial designation. In Roosevelt *v.* Maxwell (3 Blatch., 391; 20 Fed. Cas., 1155), the court uses the following language:

> And, even if it had been proved that the commercial meaning, at the time the act was passed, was that those terms did not include or designate any kind of window glass, it would not necessarily follow that the commercial understanding of the terms should be adopted in giving a construction to the act. The commercial understanding of the terms might be adopted, if it did not appear, by the act itself, that a different meaning was intended by the lawmakers. And if it does appear, by the act itself, that a particular meaning was intended by the terms used, then that particular meaning should be adopted in giving a construction to the act, whatever the commercial meaning of the terms may have been.

And, further, the court said that it is not to be presumed that Congress, when it substituted the provisions of one tariff act for those of another, "intended to use terms in a sense different from that in which they had been used in the prior act."

We find by reference to the decisions of the board that paprika, practically the same commodity in question here, has been held to be dutiable as capsicum or red pepper under similar provisions in the acts of 1897 and 1909. Not only do these decisions cover the ground paprika, like the commodity before us, but also the dry pods from which it is ground. Note G. A. 4390 (T. D. 20886); G. A. 6248 (T. D. 26957); Abstract 22126 (T. D. 30111); Abstract 22373 (T. D. 30208); Abstract 27185 (T. D. 32031).

The law of 1913 was enacted, we must conclude, with full knowledge of these decisions, and also, judging from the testimony in this case, of the fact that this article was commercially known as paprika. Note Jackson & Co.'s case, G. A. 7714 (T. D. 35331) and cases there cited; Devoy *v.* United States (3 Ct. Cust. Appls., 444; T. D. 33034); and Lang *v.* United States (4 Ct. Cust. Appls., 464; T. D. 33881).

Aside from this, we find in the law itself evidences that Congress intended to disregard any commercial designation with reference to this commodity. It is specifically described as capsicum or red pepper and a duty is provided at 1 cent per pound when not ground; when ground, an additional duty of 20 per cent ad valorem. After this provision, in the same paragraph, we find provision for "all other spices not specially provided for in this section." There can be but one conclusion as to what "all other spices" refers to. It must of necessity refer to spices other than those which are enumerated in the preceding part of the paragraph. Hence, we conclude that the rule of commercial designation has no application in this case.

The protests are therefore overruled, the classification of the collector being affirmed.

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(T. D. 36164—G. A. 7855.)

Leather—Picker straps.

Picker straps of cowhide leather, chrome tanned, cut into lengths of 30 and 36 inches, these being the lengths required to fit the looms, *held* not to be subject to duty as manufactures of leather under paragraph 360 of the tariff act of 1913, as assessed by the collector, but properly dutiable at the rate of 15 per cent ad valorem under the provision in paragraph 385 of said act for "all articles manufactured, in whole or in part, not provided for in this section."—United States v. Ringk (3 Ct. Cust. Appls., 353; T. D. 32908) cited.

United States General Appraisers, New York, February 7, 1916.

In the matter of protest 757607 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York.

Comstock & Washburn (*Henry J. Rode* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Chas. D. Lawrence*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

McClelland, *General Appraiser:* The merchandise, the classification of which is involved in this protest, is invoiced as "leather straps," and was returned by the appraiser as "manufactures of leather." Duty was assessed by the collector at the rate of 30 per cent ad valorem under paragraph 360 of the tariff act of 1913, and claim for free entry is made under paragraph 530 of said act. These two paragraphs read as follows:

360. Bags, baskets, belts, satchels, card cases, pocketbooks, jewel boxes, portfolios, and other boxes and cases, made wholly of or in chief value of leather or parchment, not jewelry, and manufactures of leather or parchment, or of which leather or parchment is the component material of chief value, not specially provided for in this section, 30 per centum ad valorem; any of the foregoing permanently fitted and furnished with traveling, bottle, drinking, dining, luncheon and similar sets, 35 per centum ad valorem.

530. All leather not specially provided for in this section and leather board or compressed leather; leather cut into shoe uppers or vamps or other forms suitable for conversion into boots or shoes; boots and shoes made wholly or in chief value of leather; leather shoe laces, finished or unfinished; harness, saddles, and saddlery, in sets or in parts, finished or unfinished.

The only witness testifying in the case was the official examiner who passed the merchandise, and he was called on behalf of protestants. The witness identified the official samples as picker straps of cowhide leather, chrome tanned. On cross-examination he testified:

Q. So far as your knowledge goes these strips are completely finished so far as the leather manufacture is concerned?—A. They are, yes.

Q. Ready to be fastened onto the loom by——?—A. Just merely lacing or stitching together.

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Q. But that does not involve any further manufacturing to the leather straps?—A. Absolutely none.

It further appears that the straps are imported in 30 and 36 inch lengths, these being the lengths required to fit the looms.

In United States *v.* Ringk (3 Ct. Cust. Appls., 353; T. D. 32908) it was held that such straps were properly subject to duty at 5 per cent ad valorem as belting leather under the first provision of paragraph 451 of the tariff act of 1909, plus 10 per cent under the *proviso* in said paragraph, which reads:

Provided, That leather cut into shoe uppers or vamps or other forms, suitable for conversion into manufactured articles, and gauffre leather, shall pay a duty of 10 per centum ad valorem in addition to the duty imposed by this paragraph on leather of the same character as that from which they are cut.

In the revision of 1913 the law was materially changed in respect to leather. The only provision in the revision for manufactures of leather is found in paragraph 360, *supra*, all leather manufactured having been transferred to the free list and covered by paragraph 530, *supra*.

Under the ruling in the Ringk case, *supra*, picker straps may not be included in the first provision of this paragraph for all leather not specially provided for, for the reason that they have been subjected to processes of manufacture which practically fits them for a special use. Neither may they be included within the provision in this paragraph for leather cut into forms, as this provision is limited to such forms of leather as are suitable for conversion into boots and shoes. In the Ringk case, *supra*, the court in effect declared that such straps were not manufactures of leather, but leather which had been subjected only to such processes and cut into such forms as to make it suitable for conversion into manufactured articles.

It is our view, therefore, that while the claim of protestants is without merit, the collector's assessment of duty on these straps as manufactures of leather was erroneous. There being no special provision in the existing tariff act for such straps, we hold them to be subject to duty at the rate of 15 per cent ad valorem under the provision in paragraph 385, which reads:

And on all articles manufactured, in whole or in part, not provided for in this section, a duty of 15 per centum ad valorem.

The protest is overruled without affirming the action of the collector.

No evidence having been offered in support of the issue involving the 5 per cent discount of duties under subsection 7 of paragraph J of section 4 of said tariff act, the claim in respect thereof is hereby overruled.

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(T. D. 36165—G. A. 7856.)

Stained glass panels for college.

Stained glass panels, 2 feet long by 1 foot wide, imported for presentation to Wellesley College, are not entitled to free entry under paragraph 655, tariff ac- of 1913, as "works of art, * * * including pictorial paintings on glass, imt- ported expressly for presentation to a * * * college."

United States General Appraisers, New York, February 7, 1916.

In the matter of protest 790163 of American Express Co. against the assessment of duty by the collector of customs at the port of Boston.

[Affirmed.]

Searle & Waterhouse (*William E. Waterhouse* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Frank P. Wilson*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and BROWN, General Appraisers; HAY, G. A., not participating).

WAITE, *General Appraiser:* The importation in this case consists of what is described in the invoice as stained glass for windows. The importation was made for Wellesley College, an incorporated college in the State of Massachusetts. It consists of three panels, we are advised by the witnesses, about 2 feet long and 1 foot wide each, made in the ordinary way of making stained glass windows by connecting irregular-shaped pieces of colored glass by means of lead strips or sash. They are what are described by the witnesses as pictorial stained glass. They were assessed at 30 per cent ad valorem under paragraph 95, tariff act of 1913, as "stained or painted glass windows, or parts thereof." Three different claims are made, which are, as set forth in the protest, as follows:

We claim that certain small windows contained in this shipment, which were assessed for duty at 30 per cent, are not properly dutiable. We claim that same should be admitted free of duty under paragraph 654 as antiquities imported in good faith for exhibition by Wellesley College, or free as antiquities over 100 years old under paragraph 656, or as pictorial paintings on glass (works of art), imported expressly for presentation to an incorporated religious society, college, or other public institution under paragraph 655 of the tariff act of October 3, 1913.

At the hearing claim under paragraph 656 was abandoned.

The claim under paragraph 654, we think, is untenable. The evidence does not show that these are antiquities, and we are not satisfied that it shows they are imported for exhibition at a fixed place to bring them within the terms of this paragraph. The protest, therefore, as regards paragraph 654 is overruled.

This leaves for consideration the claim under paragraph 655, which paragraph is in the following language:

655. Works of art, productions of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for

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presentation to a national institution or to any State or municipal corporation or incorporated religious society, college, or other public institution, including stained or painted window glass or stained or painted glass windows imported to be used in houses of worship, and excluding any article, in whole or in part, molded, cast, or mechanically wrought from metal within 20 years prior to importation; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

The first part of this paragraph provides for "works of art" generally, "productions of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution or to any State or municipal corporation or incorporated religious society, college, or other public institution," after which we find the clause which includes "stained or painted window glass or stained or painted glass windows imported to be used in houses of worship."

The history of legislation with reference to pictorial paintings on glass and stained-glass windows or stained window glass indicates that Congress intended to make a distinction between pictorial paintings on glass and stained glass. The testimony in the case before us shows that the importation is stained glass. There is some slight contention that it is not a window or window glass. We think, however, it can not be successfully maintained that the articles are not the same as the ordinary stained-glass windows or parts thereof imported for churches or other institutions. These in question are shown to have been placed in the observatory at Wellesley College in front of windows of plain glass so that the light may shine through them and they may thus be made to beautify the appearance of the interior of the edifice. It is practically the same as the use made of the importation passed upon in United States *v.* Perry (146 U. S., 71). Such windows are there held to be stained-glass windows. Under the testimony in this case we do not think the claim can be made that they are what is termed in the statute "pictorial paintings on glass," and if they are to be admitted under paragraph 655 it must be under that portion of the paragraph which reads "other works of art." Are these, then, such works of art as should be here classified and admitted free, notwithstanding the express provision for stained-glass windows in another part of the paragraph and what seems to us to be their pointed omission from the first part of the paragraph where pictorial paintings on glass are provided for? We have not seen this importation; neither has a picture or representation of the same been presented before us. The testimony, however, would not lead us to assume that they are works of art. They may be ornamental, and probably they are. They may tend to beautify and ornament the edifice, but we are unable to say that they are such works of art as are entitled to classification as such under this paragraph as "other works of art." All the testimony upon this point that was

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introduced at the hearing was given by Sarah F. Whiting, a witness produced on behalf of the importers, who describes herself as professor of astronomy at Wellesley College. After reciting that she was acquainted with the donor, who was Lady Huggins, of England, she was asked the following questions and gave the following answers:

Q. They are pictures?—A. Pictures.
Q. And artistic?—A. Why, yes.

This may have meant that they are somewhat artistic, ornamental in appearance, and valuable as a curiosity, but it seems to come far short of proving that they are artistic in that sense that would entitle them to be ranked as works of art under said paragraph 655. We are led to this conclusion, also, by the fact that articles of this kind are expressly provided for in paragraph 95, which convinces us that Congress, had it intended to include within paragraph 655 importations of this kind, would have seen fit to have expressed itself more specifically to that effect. Upon this point see United States *v.* Perry, *supra.* Note also G. A. 5275 (T. D. 24214).

The protest is overruled.

(T. D. 36166—G. A. 7857.)

Water-color painting.

ORIGINAL WATER-COLOR PAINTING—DESIGN FOR CRETONNE CLOTH.

An original water-color painting of a design for cretonne cloth is not entitled to free entry under paragraph 652, tariff act of 1913, as an original painting in water color, being excluded from the paragraph by the provision therein that the word "painting" as used in the paragraph "shall not be understood to include any articles of utility."

United States General Appraisers, New York, February 7, 1916.

In the matter of protests 775357-55236, etc., of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago.

[Affirmed.]

Harry W. Nay for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser*: The invoices and entries in these cases are not before us. The merchandise consists of certain water-color sketches, described by the appraiser in his report in protest 775357 as designs for cretonne cloth, returned for duty as water-color drawings under paragraph 376, tariff act of 1913, at 15 per cent ad valorem. He also states that they "were not the originals, or one of the first two copies or replicas, or artists' proof;" and that following G. A. 7643 (T. D. 34929), they would now be returned under paragraph 332 at 25 per cent ad valorem as manufactures of paper not specially

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provided for. Free entry is claimed under paragraph 652 as for an original painting in water color. At the hearing it was admitted on behalf of the Government that these are originals. In our view the question whether they are originals is not material.

A sample was introduced in evidence, which is a water-color painting on paper in the shape of a panel about 2 feet long and 14 inches wide. The design is of flowers, leaves, and ribbon, running longitudinally of the sketch. It is intended to be used as a design for cloth or paper, such as is seen in cretonne draperies, furniture coverings, and in wall papers. We find it is ornamental and decorative, but it does not, in our opinion, possess those characteristics necessary to entitle it to classification under paragraph 652. We think it is excluded from that paragraph by the provision therein which says that the word "painting" as used in the paragraph "shall not be understood to include any articles of utility." This, in our judgment, must be considered an article of utility. While it is not used directly in the form in which imported as an article of furniture or a wall decoration, its use is as a pattern for the manufacture of such things as are in themselves principally useful, though of decorative design and pattern. Note in this connection Vandiver's case, G. A. 6542 (T. D. 27913) and Harper *v.* United States (172 Fed., 289; T. D. 29806).

The protests are overruled.

(T. D. 36167—G. A. 7858.)

Clerical error.

CANDY CRYSTALS—ADDITIONAL DUTIES—ENTERED VALUE.

Although it is readily ascertainable from the papers which were before the appraiser and the collector that a manifest clerical error was made in the entry of certain candy crystals, which error resulted in an overvaluation of the merchandise, *held* that as there was no question of additional duties involved and the law provides in paragraph I of section 3, tariff act of 1913, that duty shall not be assessed upon an amount less than the entered value, the board was without authority to correct the error.

United States General Appraisers, New York, February 7, 1916.

In the matter of protest 746458-49357 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago.

[Affirmed.]

H. W. Ackhoff for the importers.

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* In this case it is claimed that a manifest clerical error was committed in the entry of certain "candy

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crystals." The entry was a pro forma one covering a variety of articles of wearing apparel and personal effects. Accompanying the entry were the memoranda bills for the various purchases. The candy crystals were purchased with two other articles at a London shop, and the currency of the bill is, of course, in English money—pounds, shillings, and pence. The item in question appears in the bill as follows: "6 pkts. candy crystals, 3.9." The broker apparently mistook the words "candy crystals" for "candle crystals," and accordingly entered this item as "glassware" at a value of £3 9s., dutiable at 45 per cent ad valorem under paragraph 84, tariff act of 1913. It was returned by the appraiser as 6 pounds of confectionery at a value of 3s. 9d. and was classified by the collector as confectionery valued at more than 15 cents per pound, dutiable at 25 per cent ad valorem, and that rate of duty was assessed on the entered value of £3 9s. No objection is made to the rate of duty, but the importers claim that the value stated in the entry and on which duty was assessed is excessive and is the result of a manifest clerical error. The claim as stated in the protest is as follows:

As to the crystals, we are dissatisfied with your assessment of duty on valuation of £3 9s. instead of 3s. 9d. as stated on invoice on file with the entry and as correctly appraised by the appraiser.

* * * * * * *

As to the crystals, we claim that, through a manifest clerical error, we entered these goods as glassware at 45 per cent under paragraph 84 at a valuation of £3 9s. owing to the fact that this invoice is written in pencil and is very indistinct and we, therefore, read the above item as "candle crystals" and the valuation as £3 9s. instead of 3s. 9d. A close inspection of this invoice will also disclose the fact that we erroneously footed and corrected the total extension so as to read £7 13s. 3d. because the shillings of the first two items of invoice were carelessly written in the same line or column as the pounds sterling of the third and last item of the invoice. The above facts prove the correctness of our statement as to this being a manifest clerical error, which facts were furthermore confirmed by the appraiser's correct valuation of the goods as 3s. 9d., viz, the identical value as stated on the invoice.

The error in the entered value was a clerical one and it is readily ascertainable from an inspection of the papers which were before the appraiser and the collector. It is therefore a manifest clerical error. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437); United States *v.* Wyman & Co. (4 *ib.*, 264; T. D. 33485); United States *v.* Proctor Co. (5 *ib.*, 44; T. D. 34091); Thomsen & Co. *v.* United States (5 *ib.*, 69; T. D. 34100); United States *v.* Nozaki Bros. (5 *ib.*, 286; T. D. 34471); United States *v.* Rice (5 *ib.*, 288; T. D. 34472); United States *v.* Brodie (6 *ib.*, —; T. D. 35438).

But is the error one which this board is authorized to correct? Paragraph I of section 3, tariff act of 1913, provides that in the case of undervaluation from manifest clerical error additional duty shall not be imposed, but this provision seems to warrant nothing more

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than relief from additional duties. Hampton *v.* United States (5 Ct. Cust. Appls., 51; T. D. 34093).

In this case there is no question of additional duties involved, for there was no undervaluation, but on the contrary an overvaluation; and paragraph I provides that "duty shall not, however, be assessed in any case upon an amount less than the entered value," unless by direction of the Secretary of the Treasury in cases where goods have been entered at a higher value than the foreign-market value in order to meet advances by the appraiser in similar cases pending on appeal for reappraisement. The only provision in the statute authorizing the correction of errors involving a reduction of the entered value to which our attention has been directed is found in paragraph Y of section 3, tariff act of 1913, which authorizes the Secretary of the Treasury "to correct manifest clerical errors in any entry or liquidation for or against the United States at any time within one year of the date of such entry, but not afterwards."

It does not appear from the record that any application was made to the Secretary of the Treasury for correction of the error in this case.

Although we are satisfied that a manifest clerical error was committed in making the entry in this case which resulted in an overvaluation of the merchandise, we can find no statute giving this board authority to correct the entry.

There are other claims made in the protest, but no evidence has been offered to sustain them. The protest is in all respects overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, FEBRUARY 4, 1916.

No. 39221.—Protest 776594 of M. L. Eckstein & Co. (New York).

STENCIL CARDS—TOYS.

SULLIVAN, *General Appraiser:* As shown by the official samples the merchandise in question consists of stencils made of paper or thin cardboard, the perforations forming the outline of an elephant, a cat, or an Indian.

These articles were assessed with duty as toys at 35 per cent ad valorem under paragraph 342, act of 1913. The protest claims them dutiable at 25 per cent ad valorem under paragraph 332 of the same act, which provides for—

Papers or cardboard, cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, or other forms, * * * and all papers and manufactures of paper or of which paper is the component material of chief value, not specially provided for in this section .* * *.

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At the trial protestant's counsel moved the incorporation of the record and samples in suit 821. The board admitted the record in that case. The record shows, however, that the admission of that record was not to be considered as a finding by the board that the samples in that case were the same as those in the case at bar. After such incorporation the case was submitted.

Suit 821 was entitled Knauth, Nachod & Kuhne *v.* United States (3 Ct. Cust. Appls., 183; T. D. 32465). The merchandise in that case was printed paper advertising cards, with the outline of a picture die cut into them after the manner of a stencil. They were assessed with duty at the rate of 35 per cent ad valorem under the proviso to paragraph 415, tariff act of 1909, which reads:

Provided, That paper embossed, or cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, bands, strips, or other forms, or cut or shaped for boxes, plain or printed, but not lithographed, and not specially provided for in this section, shall be dutiable at 35 per centum ad valorem.

The protestants claimed that those articles were properly dutiable as printed matter under paragraph 416, act of 1909, at 25 per cent ad valorem. The court affirmed the board's decision overruling the protest, holding that the merchandise had been properly classified, and that a more specific provision than that above quoted, as applied to the merchandise then in question could not without great difficulty be devised.

The merchandise in that case is very similar to the merchandise here, with the exception that an advertisement of an insurance company is printed across the top of the cards while the merchandise under consideration merely has the words "Made in Germany" in raised letters thereon.

The facts, however, are dissimilar. In the case at bar the merchandise is assessed as toys and is claimed to be paper or cardboard die cut or stamped, etc. In that case the merchandise was assessed as paper die-cut and claimed dutiable as printed matter, and the court was not called upon to decide whether or not the merchandise was toys. We are therefore of opinion that the Knauth case, *supra*, is not controlling here.

The collector by assessing this merchandise with duty as toys has in effect stated that it is intended and designed for the amusement of children only, and that it is reasonably fit for no other purpose. There is nothing in the record to contradict this; on the contrary an examination of the samples tends to confirm us in our belief that the collector correctly classified the merchandise. They are apparently intended for the amusement of children, and that they would be amused thereby in our opinion is unquestioned. In a case of this kind, where the collector has classified merchandise as toys, such classification being presumptively correct, the importers must overcome such presumption by a preponderance of evidence, by proving that the merchandise is capable of practicable use; that it is reasonably fitted for other purposes than the amusement of children, such as the amusement of adults, for instance, or that it is not known and recognized as a toy by the trade generally. (Illfelder *v.* United States, 1 Ct. Cust. Appls., 109-111; T. D. 31115.)

The protest is overruled and the collector's decision affirmed.

No. 39222.—Protests 762749, etc., of Pacific Mail Steamship Co. et al., protest 772565 of Western Pacific Railway Co., and protests 789758, etc., of Southern Pacific Co. et al. (San Francisco and Seattle).

TENNIS RACKETS—PAPER PARASOLS—TOYS—SUFFICIENCY OF PROTEST.—Tennis rackets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of wood under paragraph 176. Paper parasols classified as toys are claimed dutiable as manufactures of paper at 25 per cent, no paragraph being mentioned.

The tennis rackets, which were found to be in chief value of wood, were held dutiable under paragraph 176, as claimed. Abstract 37659 followed. The paper parasols

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were held dutiable at 25 per cent under paragraph 332. Cattus *v.* United States (4 Ct. Cust. Appls., 9; T. D. 33198), affirming Abstract 29834 (T. D. 32830), followed.

SULLIVAN, *General Appraiser.* * * * Parasols are specifically described in paragraph 383, tariff act of 1913, as follows:

Umbrellas, parasols, and sunshades covered with material other than paper or lace, not embroidered or appliquéd * * *.

It must be admitted that this record sustains the contention of the importers that the parasols are of paper. The question then arises: Are we required to search for the paragraph under which classification is desired for this merchandise by the protestants? In other words, is this protest sufficiently specific within the provisions of the statute to give this board jurisdiction to pass on the proper classification of these parasols? The letter of the deputy collector of customs transmitting the protest to the board states:

I submit herewith the protest * * * against my assessment of duty at 35 per cent on certain "tennis rackets and paper parasols" claimed to be tennis rackets dutiable at 15 per cent under paragraph 176; parasols dutiable at 25 per cent as manufactures of paper.

This letter merely repeats the claim in the protest as to the parasols, without indicating the paragraph number. We are therefore in ignorance as to whether the collector was informed of what the protestants claimed his action should have been as to these articles. There are over seventy varieties or manufactures of paper enumerated in the tariff act of 1913 with a range of duty from 5 to 60 per cent ad valorem, but we find that paragraph 332 contains the following:

* * * And all papers and manufactures of paper or of which paper is the component material of chief value, not specially provided for in this section, 25 per centum ad valorem.

Evidently this is the section under which protestant desired the merchandise classified. While protests should receive a fairly liberal construction, it still remains the duty of the protestant to point out the paragraph under which he claims the merchandise should be classified, and the error, if any, committed by the collector. We heartily approve of the rules enunciated in Lichtenstein *v.* United States (1 Ct. Cust. Appls., 79; T. D. 31105), and believe that case is a guide not only for this board, but for importers, as to what is required to be stated in a protest. In the case at bar, that construction of the law probably should apply. Inasmuch, however, as there is but one paragraph in the paper schedule—that quoted—applicable to these parasols, the collector may have been apprised of what the protestants intended to claim in their protest. We therefore hold protest 762749 sufficient as to the paper parasols. * * *

No. 39223.—Protest 770631-45494 of Mandel Bros. (Chicago), and protest 593274 of Wiener Bros. (New York).

JEWELRY—MESH BAGS.—Jewelry classified at 85 per cent ad valorem is claimed dutiable at 60 per cent under paragraph 448, tariff act of 1909, or at 45 per cent under paragraph 199.

Opinions by SULLIVAN, G. A. The jewelry in question was held dutiable at 60 per cent under paragraph 448. Guthman *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed. Brass mesh bags were held dutiable at 45 per cent under paragraph 199. G. A. 7129 (T. D. 31089) followed. Protests overruled as to German silver mesh bags.

No. 39224.—Protests 761486, etc., of P. C. Kuyper & Co. et al. (New York).

CELLULOID SHEETS, RODS, AND TUBES—PINS.—Celluloid sheets, rods, tubes, and pins classified at 40 per cent ad valorem under paragraph 25, tariff act of 1913, are claimed dutiable at 25 per cent under the same paragraph.

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Opinion by SULLIVAN, G. A. Upon stipulation of counsel the celluloid sheets, rods, and tubes were held dutiable at 25 per cent under paragraph 25. United States v. Cohn (6 Ct. Cust. Appls., —; T. D. 35979) followed. Protests overruled as to the pins.

No. 39225.—Protest 791326 of Catholic Book & Church Supply Co. (Portland, Oreg.).

CRUCIFIXES, SILVER-PLATED.—Silver-plated crucifixes classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The crucifixes in question being silver plated, were held dutiable at 50 per cent under paragraph 167. Protest overruled, the correct claim not having been made.

No. 39226.—Protest 783254 of Adams Express Co. (New York).

FLANNELS.—Flannels used for undergarments for infants, classified as wool dress goods under paragraph 290, tariff act of 1913, are claimed dutiable as flannels under paragraph 289.

Opinion by BROWN, G. A. On the authority of G. A. 7772 (T. D. 35703) the flannels in question were held dutiable at 25 or 30 per cent under paragraph 289 as claimed.

BEFORE BOARD 2, FEBRUARY 4, 1916.

No. 39227.—Protests 780858, etc., of G. W. Sheldon & Co. (New York).

ADVERTISING SIGNS—SURFACE-COATED PAPER.—Advertising signs classified as manufactures in chief value of surface-coated paper at 35 per cent ad valorem under paragraph 324, tariff act of 1913, are claimed dutiable as manufactures of paper at 25 per cent under paragraph 332, or as boards at 20 per cent under paragraph 169.

Opinion by FISCHER, G. A. The signs, found upon analysis to be composed in chief value of paper, were held dutiable at 25 per cent under paragraph 332. Protests sustained in part.

No. 39228. —Protest 791570 of American Express Co. (New York).

FISHING TACKLE.—Merchandise reported by the appraiser to be finished gut leaders for use in their imported condition as fishing tackle, classified at 30 per cent ad valorem under paragraph 136, tariff act of 1913, is claimed dutiable as manufactures of catgut at 20 per cent under paragraph 366.

Opinion by FISCHER, G. A. The merchandise which was found to consist of parts of fishing tackle was held properly classified under paragraph 136.

No. 39229.—Protest 791158 of Markt & Hammacher Co. (New York).

HOLLOW WARE.—Pot covers, pans, saucers, tumblers, plates, bowls, soap dishes, basins, mugs, and other kitchen utensils composed of steel enameled with vitreous glasses, classified as hollow ware at 25 per cent ad valorem under paragraph 134, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. The pot covers were held dutiable under paragraph 167 as claimed. Protest overruled as to all other articles.

No. 39230.—Protests 737771, etc., of Karl Neuhoff (New York).

FIGURED COTTON CLOTH.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as figured cotton cloth under paragraphs 252 and 253.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States v. Sherman (6 Ct. Cust. Appls., —; T. D. 35501), the provision for cotton cloth, woven figured, was held more specific than that for Jacquard figured manufactures of cotton. Protests sustained.

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BEFORE BOARD 1, FEBRUARY 7, 1916.

No. 39231.—Protests 717361, etc., of Geo. S. Bush & Co. et al. (Portland, Oreg.).

JAPANESE WHITE OAK LUMBER.—The question at issue here is whether Japanese white oak lumber invoiced as quarter-sawed oak and plain oak and oak plain planks is properly classifiable as cabinet wood under paragraph 203, tariff act of 1909, and paragraph 169, tariff act of 1913.

McCLELLAND, *General Appraiser.* * * * This is not a new issue. In G. A. 7357 (T. D. 32454) the board determined that Japanese white oak in the log was a cabinet wood, and therefore entitled to free entry under paragraph 713 of the tariff act of 1909, that being the contention made against the collector's assessment of duty thereon at the rate of one-half of 1 cent per cubic foot under the provisions of paragraph 200 of that act.

Subsequently the board in G. A. 7682 (T. D. 35131), in deciding the protest of Mitsui & Co., one of the protestants in this case, again held Japanese white oak in the form of sawed lumber to be cabinet wood, and affirmed the assessments of duty thereon under the provisions of paragraph 203 of the act of 1909 and paragraph 169 of the tariff act of 1913.

It is worthy of note that the oak passed upon in G. A. 7357 *supra*, was in the form of logs, and there being a provision in the act of 1909 for the free entry of cabinet woods in the log, rough or hewn only, protestants objected to the collector's assessment of duty, making claim that Japanese white oak in the log was a cabinet wood. The oak passed upon in G. A. 7682, *supra*, was in the form of lumber, and in the trial of that case the protestants contended that Japanese white oak was not cabinet wood. In that case we said:

> The mere fact that the oak here involved is in the form of lumber has no bearing upon the issue. If Japanese white oak is a cabinet wood it is such in whatever form it is imported.

Such oak, whether in the log or in the form of planks or boards, is either cabinet wood or it is not; but even if the answer to this general proposition be in the affirmative, it does not then necessarily follow that all forms of Japanese white oak is suitable for use as cabinet wood. Some such oak because of its dimensions or condition might not be adapted to such use, but the claim is not made here that the oak in question, as imported, is in such form or forms as to make it unsuitable for use as cabinet wood.

Altogether 13 witnesses were called and examined as to whether Japanese white oak is a cabinet wood, and no question being raised as to the condition of the oak involved, we must assume that if any of it is a cabinet wood it is all cabinet wood. The testimony overwhelmingly sustains the collector's classifications and each of the protests is overruled in harmony with G. A. 7682, *supra.* * * *

No. 39232.—Protests 673090, etc., of L. Gondolfi & Co. (New York).

OLIVE OIL IN TINS—TARE.—These protests are against the tare allowance for tins containing olive oil classified under paragraph 38, tariff act of 1909.

Opinion by McCLELLAND, G. A. Upon the testimony of the United States weigher the protest was sustained as to the quarter tins.

No. 39233.—Protests 734803, etc., of G. W. Sheldon & Co. (New York).

COAL-TAR PREPARATION—WOOD PRESERVER BAROL.—Merchandise invoiced as "Wood preserver Barol," and classified as a coal-tar preparation at 15 per cent ad valorem under paragraph 21, tariff act of 1913, is claimed free of duty under paragraph 452, or dutiable at 5 per cent under paragraph 22, or at 10 per cent under paragraph 13.

Opinion by McCLELLAND, G. A. Protests unsupported; overruled.

No. 39234.—Protest 770546 of Knauth, Nachod & Kuhne (New York).

BATHING CAPS—INDIA-RUBBER MANUFACTURES.—Bathing caps classified as manufactures of india-rubber, druggists' sundries, at 15 per cent ad valorem under para-

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graph 368, tariff act of 1913, are reported by the appraiser in an amended return as dutiable under the same paragraph at 10 per cent as manufactures of india rubber not specially provided for, at which rate they are claimed dutiable.

Opinion by McClelland, G. A. The bathing caps in question were held dutiable at 10 per cent under paragraph 368 as claimed.

No. 39235.—Protests 768644, etc., of G. Siegle Co. (New York).

Colors.—Merchandise classified at 20 per cent ad valorem under paragraph 54, tariff act of 1913, is claimed dutiable as colors at 15 per cent under paragraph 63.

Opinion by McClelland, G. A. On the authority of Abstracts 37081 and 38959 the colors in question were held dutiable at 15 per cent under paragraph 63.

No. 39236.—Protest 662151 of B. Altman & Co. (New York).

Reliquidation.—This protest is against the action of the collector in reliquidating an entry of leather gloves. Cumulative duty was assessed on the gloves in question, against which liquidation a protest was filed which was decided adversely to the importers' claim. Subsequently the Customs Court upon appeal sustained the claim of the importers in full (Altman *v.* United States, 5 Ct. Cust. Appls., 412; T. D. 34941) and the entry was reliquidated in obedience to the board's mandate, based upon the court decision, and the refund of cumulative duties was made. This protest is a repetition of the original protest and appears to have been filed without any excuse.

Opinion by McClelland, G. A. The protest was held to be without warrant in law. Dismissed.

No. 39237.—Protest 672781 of A. Klipstein & Co. (New York).

Reliquidation.—The collector classified the merchandise in question at one-half of 1 cent per pound under paragraph 290, tariff act of 1909, and the importers protested. It was held dutiable by the board as crude wool grease at one-fourth of 1 cent per pound under the same paragraph. The present protest is filed against the reliquidation by the collector.

Opinion by McClelland, G. A. The claim here made appears to be simply a repetition of that set forth in the original protest. Protest dismissed.

No. 39238.—Protest 791983-57979 of Marshall Field & Co. (Chicago).

Unfinished Necklaces—Imitation Pearl Beads—Jewelry.—Imitation pearl beads strung on cotton threads or strings, the beads graduated in size, classified at 50 per cent ad valorem under paragraph 333, tariff act of 1913, as beaded articles, are claimed dutiable under that paragraph as imitation pearl beads loosely strung at 35 per cent.

Opinion by Sullivan, G. A. It was found that these beads are strung to keep them in their relative positions and that they are to be restrung and a clasp attached. They were held to be unfinished necklaces, dutiable as jewelry at 60 per cent under paragraph 356. Protest overruled.

Before Board 2, February 7, 1916.

No. 39239.—Protest 783159 of Wester Bros. (New York).

Razor Blades—Knife Blades.—Knife blades and razor blades imported without handles, classified at 55 per cent ad valorem under paragraph 128, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 167.

Opinion by Fischer, G. A. On the authority of G. A. 7815 (T. D. 35897), relating to unassembled blades, handles, or other parts of razors, separately imported, the merchandise in question was held to be relegated for classification purposes to the general provision for manufactures of metal not specially provided for, in paragraph 167. Protest sustained in part.

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BEFORE BOARD 1, FEBRUARY 9, 1916.

No. 39240.—Protest 788363 of Morimura Brothers (New York).

GRASS, MANUFACTURES OF—SUBMISSION ON SAMPLE.

McCLELLAND, *General Appraiser.* The merchandise involved was assessed with duty at the rate of 25 per cent ad valorem under paragraph 368 of the tariff act of 1913 as a manufacture of grass. It is claimed to be dutiable at either 15 per cent under paragraph 176 or at 20 per cent ad valorem under paragraph 368 of said act. Other claims are made.

The only testimony in the case is that of a witness in the employ of protestants who simply produced a sample representing the merchandise which was received and marked in evidence. Upon the sample being admitted and marked in evidence counsel for the importers asked: "Has the Government any objection to having that submitted for analysis?" to which counsel for the Government answered, "No." The case was then submitted and it is on such a record that it comes to us for decision.

The decision of the collector is affirmed.

DISSENTING OPINION.

BROWN, *General Appraiser.* As I read the record in this case, it contains an oral stipulation between the importers' counsel and the counsel for the Government that the sample shall be submitted to the Government analyst for analysis.

This agreement means, I take it, that said analysis is to be before the board at the time of the decision, and under that stipulation in my opinion, in the present state of the record, we should not now proceed to a decision of the case.

No. 39241.—Protest 788244 of McKesson & Robbins (New York).

AROMATIC SUBSTANCE—LAVENDER LEAVES.—Merchandise returned by the appraiser as a natural aromatic substance used in the manufacture of, but not marketable as, perfumes or cosmetics, at 20 per cent ad valorem under paragraph 49, tariff act of 1913, is claimed free of duty under paragraph 477, or dutiable at 10 per cent under paragraph 27.

Opinion by McCLELLAND, G. A. The testimony of the witness standing alone, that the lavender flowers in question are used by his firm for manufacturing medicinal preparation and that it is his belief that they are used in sachets in the condition imported, was held not to justify a reversal of the collector's action. Protest overruled. Abstract 38486 noted.

BEFORE BOARD 2, FEBRUARY 9, 1916.

No. 39242.—Protests 790356, etc., of Morris Goldberg's Sons et al. (New York).

BEADED TRIMMINGS.—Trimmings and ornaments made of beads or spangles and in part of netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by FISCHER, G. A. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., —; T. D. 35464) the trimmings and ornaments composed in chief value of beads or spangles were held dutiable at 50 per cent under paragraph 333. Protests sustained in part.

No. 39243.—Protests 748375, etc., of Interstate Enamel Co. et al. (Philadelphia).

SPOONS, LADLES, AND SKIMMERS—HOLLOW WARE.—Articles invoiced as spoons, ladles, and skimmers, classified as aluminum or enameled hollow ware at 25 per cent ad valorem under paragraph 134, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the authority of G. A. 7662 (T. D. 35049) the spoons, ladles, and skimmers in question were held dutiable under paragraph 167 as claimed.

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No. 39244.—Protest 782339 of Mogi, Momonoi & Co. (New York).

FIGURED COTTON CLOTH.—Merchandise classified as figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton cloth, woven figured, under paragraph 252.

Opinion by COOPER, G. A. On the authority of United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501), affirming G. A. 7618 (T. D. 34858), the cotton cloth in question was held dutiable under paragraph 252 as claimed.

No. 39245.—Protests 734017, etc., of S. H. Kahn & Co., protests 756853, etc., of Kupfer Bros. Importing Co. et al., and protests 777046, etc., of Perry, Ryer & Co. et al. (New York).

COTTON CLOTH—COTTON TABLE DAMASK—DOILIES—COTTON QUILTS.—Woven figured cotton cloth, cotton quilts, and cotton table damask and doilies, classified as figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable as woven figured cotton cloth under paragraph 252, and as cotton quilts and cotton table damask, at 25 per cent under paragraphs 264 and 263, respectively.

Opinions by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501), G. A. 7748 (T. D. 35577), and G. A. 7630 (T. D. 34903) the cotton table damask and doilies were held dutiable under paragraph 263, the cotton quilts under paragraph 264, and the figured cotton cloth under paragraph 252.

BEFORE BOARD 1, FEBRUARY 11, 1916.

No. 39246.—Protest 757632 of Morimura Bros. (New York).

PAPER AND SILK HATCHETS—MINIATURE PURSES—SOUVENIRS—TOYS.—Articles in the shape of hatchets composed of paper, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, and similar articles composed of paper and silk, and small silk purses, classified as manufactures of silk at 45 per cent under paragraph 318, are claimed dutiable as articles composed of tissue or crêpe paper at 30 per cent under paragraph 323, as manufactures of paper at 25 per cent under paragraph 332, as manufactures of cotton at 30 per cent under paragraph 266, or as toys at 35 per cent under paragraph 342. The purses are also claimed dutiable as articles of wearing apparel under paragraph 256.

Opinion by SULLIVAN, G. A. The hatchets, which are hollow, are used as favors or souvenirs on Washington's Birthday as containers for candy and sometimes as toys or ornaments. The evidence was held sufficient to show that they are not toys. (Illfelder *v.* United States, 1 Ct. Cust. Appls., 109; T. D. 31115.) As it does not appear what kind of paper is the component material of chief value in one item, it was held dutiable as in chief value of crêpe paper under paragraph 323. Two items which appear clearly to be of ordinary paper were held dutiable under paragraph 332. As to the hatchets composed of silk and paper, it was found upon analysis that silk is the component material of chief value. They were held properly classified under paragraph 318. There is some question as to whether the purses, which are very small, are doll's purses or used as containers for finger rings, each one being large enough to hold one or two rings. It was held that the contention that they are toys was not established. United States *v.* Oberle (1 Ct. Cust. Appls., 527; T. D. 31545) cited.

No. 39247.—Protest 737476 of Knauth, Nachod & Kuhne (New York).

PAPER HATS—MANUFACTURES OF CREPE PAPER—TOYS.—Caps, hats, and noisemakers in the form of fans, in chief value of crepe or tissue paper, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as articles in chief value of crepe or tissue paper at 30 per cent under paragraph 323.

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Opinion by SULLIVAN, G. A. These articles are used at carnivals or celebrations by both adults and children; also for advertising purposes. They were found not to be toys and held dutiable under paragraph 323. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) and Abstract 38875 followed.

No. 39248.—Protests 769407, etc., of M. L. Eckstein & Co. (New York).

CREPE PAPER HATS.—Crepe paper hats classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as articles in chief value of crepe or tissue paper, at 30 per cent under paragraph 323.

Opinion by SULLIVAN, G. A. Hats composed of tissue or crepe paper and cardboard were held dutiable under paragraph 323 as claimed.

No. 39249.—Protest 736326–46973 of Geo. W. Sheldon & Co. (Chicago).

LINEN PROVERS—THREAD COUNTERS—OPTICAL INSTRUMENTS—MICROSCOPES.—Linen provers or thread counters, which are instruments used to minutely examine cloth or to count the threads thereof, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. The article consists of a small lens set in a brass or nickel-plated frame, hinged to an upright having a circular hole therein, which in turn is hinged to a base having a hole one-half inch square; the whole folding into a compact shape about 1 inch by three-fourths of 1 inch in size and one-fourth of 1 inch thick, adapting it to be conveniently carried in the pocket. It is used to magnify threads. It was held not to be an optical instrument but a microscope, dutiable under paragraph 94 as claimed. G. A. 7697 (T. D. 35220), affirmed in United States *v.* Bliss (6 Ct. Cust. Appls., —; T. D. 35980), and Abstract 38900 cited.

No. 39250.—Protest 785444 of B. Herder (St. Louis).

CRUCIFIXES.—Crucifixes composed of nickel-plated metal and wood, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal, not plated with gold or silver, at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The crucifixes in question returned by the collector as articles of metal were held dutiable under paragraph 167 as claimed. Abstracts 37533 and 38704 followed.

No. 39251.—Protest 787990 of Geo. Borgfeldt & Co. (New York).

METAL COLLAPSIBLE DRINKING CUPS.—Collapsible drinking cups composed of metal, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon the appraiser's amended report the cups in question were held dutiable under paragraph 167 as claimed. Abstract 38700 followed.

No. 39252.—Protest 788616 of Frank P. Dow Co. (Seattle).

TENNIS RACKETS—TOYS.—Tennis rackets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by SULLIVAN, G. A. On the authority of Abstract 37615 the tennis rackets in question were held dutiable under paragraph 176.

No. 39253.—Protests 759986, etc., of American Bead Co. (New York).

BEADS—IMITATION PRECIOUS STONES.—Merchandise classified as beads at 35 per cent ad valorem under paragraph 333, tariff act of 1913, is claimed dutiable as imitation precious stones for use in the manufacture of jewelry, at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. It was found that certain items are used in the manufacture of jewelry and were held dutiable under paragraph 357. G. A. 7188 (T. D. 31402) followed. Protests sustained in part.

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(T. D. 36168.)

Plant quarantine act—Admission of cotton.

Collectors to be governed by the regulations of the Secretary of Agriculture relative to the admission of foreign cotton.

TREASURY DEPARTMENT, *February 15, 1916.*

To collectors and other officers of the customs:

Your attention is invited to copies of the rules and regulations governing the importation of cotton into the United States, revised by the Department of Agriculture January 25, 1916, and plant quarantine decision No. 8 of February 2, 1916, modifying the said regulations, which have been forwarded to you by mail, and by which you will be governed.

T. D. 35486 of June 4, 1915, is hereby amended accordingly.

(92655–19.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36169.)

Disinfection of cotton and cotton waste.

Cotton and cotton waste may be forwarded under immediate transportation entry for disinfection, although not shown by the invoice and bill of lading or manifest to be destined to a port of delivery under the act of June 10, 1880.

TREASURY DEPARTMENT, *February 17, 1916.*

To collectors of customs and others concerned:

For the purpose of disinfection under regulations prescribed by the Secretary of Agriculture, cotton and cotton waste, which is free of duty, may be forwarded to Boston, Mass., or San Francisco, Cal., or to other ports of delivery under the act of June 10, 1880, at which disinfection plants may hereafter be established, under immediate transportation entry from the place of first arrival in the United States upon compliance by the parties with the requirements of article 671 of the Customs Regulations of 1915 relative to the forwarding of merchandise which is subject to specific rates of duty, even though the invoice and bill of lading or manifest do not show that the merchandise is destined to said places.

(92655–19.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36170.)

Shippers' export declarations.

Shippers' export declarations (Customs Cat. 7525) will be furnished free of cost for Government use.

TREASURY DEPARTMENT, *February 18, 1916.*

To collectors of customs:

The shippers' export declarations (Customs Cat. 7525) prescribed in T. D. 35969, dated December 14, 1915, will be furnished free of

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cost to the various executive departments and independent establishments of the Government for use in making shipments of freight beyond the jurisdiction of the United States, upon application by the head of the department or of the independent establishment to the Secretary of the Treasury, Division of Printing and Stationery.

The use of the forms so furnished will be confined to shipments of merchandise by Government officials for and on behalf of the Federal Government.

Customs officers are supplied with these blanks for sale where they are to be used for other shipments at the price of one-half cent each, or $5 per thousand, and hereafter none will be furnished by those officers free of cost.

(93120.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36171.)

Lotus-lily seeds.

Lotus-lily seeds, or so-called lotus nuts, dutiable according to condition at the rate of 25 per cent ad valorem as prepared vegetables under paragraph 200, tariff act of 1913, or 20 per cent ad valorem as sweetmeats under paragraph 217, or 5 cents per pound as seeds not specially provided for under paragraph 212.

TREASURY DEPARTMENT, *February 18, 1916.*

SIR: The department is in receipt of your letter of the 7th instant reporting with respect to the variance in practice in the classification of lotus-lily seeds or so-called lotus nuts.

It appears that the seeds are in various forms, as follows: (1) Whole, unhulled, dried by artificial heat; (2) split, unhulled, dried by artificial heat; (3) split, hulled; (4) canned in water; (5) candied; (6) unhulled and possessing germinating properties.

The department is of the opinion that seeds which will not germinate and can not be used for agricultural purposes but which are used for food purposes and are not otherwise specially provided for, should be classified as vegetables, and therefore concurs in your view that the first four classes mentioned are subject to duty at the rate of 25 per cent ad valorem as prepared vegetables under paragraph 200 of the tariff act of 1913, Abstract 19940 (T. D. 29339). The department also concurs in your view that the fifth class is properly dutiable at the rate of 20 per cent ad valorem as sweetmeats under paragraph 217 of the tariff act, Abstract 21734 (T. D. 29974), and that the sixth class is dutiable at the rate of 5 cents per pound under paragraph 212 of said act as seed not specially provided for, following T. D. 29055, T. D. 31373, and Abstract 29146 (T. D. 32681).

You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(71253.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36172.)

Drawback on lubricating oil.

Drawback on lubricating oils manufactured by the Cornplanter Refining Co., of Warren, Pa., and the Anchor Refining Co., of Jersey City, N. J., with the use of imported rapeseed oil, for the account of S. E. Heymann & Co., of New York, N. Y.

TREASURY DEPARTMENT, *February 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on lubricating oils manufactured by the Cornplanter Refining Co., of Warren, Pa., and the Anchor Refining Co., of Jersey City, N. J., with the use of imported rapeseed oil for the account of S. E. Heymann & Co., of New York, N. Y.

Records shall be kept by each of the companies named in the manner described in their respective sworn statements, which will show, in the case of each lot of lubricating oil manufactured for exportation with benefit of drawback, the quantity and identity of rapeseed oil and the quantity of other materials used and the quantity of lubricating oil produced. An abstract from the manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported rapeseed oil appearing in the exported lubricating oil, as shown by the abstract from the manufacturing record.

The sworn statements of S. E. Heymann & Co., the Cornplanter Refining Co., and the Anchor Refining Co., dated September 1, 1915, November 22, 1915, and February 8, 1916, respectively, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(101940-3.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36173.)

Drawback on shanks.

Drawback on steel shanks or leather and steel shanks manufactured by the George E. Keith Co., of Campello, Mass., with the use of imported coiled shank steel.—T. D. 31284 of February 9, 1911, revoked.

TREASURY DEPARTMENT, *February 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on steel shanks or combined leather and steel shanks manufactured by the

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George E. Keith Co., of Campello, Mass., with the use of imported coiled shank steel.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated February 8, 1916, transmitted herewith, which will show, in the case of each lot of steel shanks or leather and steel shanks manufactured for exportation with benefit of drawback, the lot number, date of manufacture thereof, and the quantity and identity of the imported coiled shank steel appearing therein. An abstract from such manufacturing record shall be filed with or made a part of the drawback entry.

The allowance shall not exceed the quantity of imported coiled shank steel appearing in the exported shanks, as shown by the abstract from the manufacturing record.

T. D. 31284 of February 9, 1911, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(74697.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36174—G. A. 7859.)

Magnifying glasses—Optical instruments—Microscopes.

Pocket magnifying glasses are dutiable as microscopes under paragraph 94 rather than as opitcal instruments under paragraph 93 of the tariff act of 1913. Microscopes are instruments designed to obtain a magnified image of any object whose real dimensions are too small to admit of its being seen distinctly by the naked eye. The pocket magnifying glasses under consideration come within this definition, and are therefore microscopes.

United States General Appraisers, New York, February 16, 1916.

In the matter of protest 781197 of Sussfeld, Lorsch & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Curie, Smith & Maxwell (*Thomas M. Lane* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

SULLIVAN, *General Appraiser:* The merchandise in question consists of pocket magnifying glasses. They were assessed with duty as optical instruments under paragraph 93 of the tariff act of 1913 at 35 per cent ad valorem, and claimed dutiable under paragraph 94 as microscopes at 25 per cent ad valorem. Many claims are made in the protest, but that mentioned appears to be the one relied on by the protestants.

Several witnesses testified on behalf of both the protestants and the Government, and four samples of the merchandise were received

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in evidence. Three of these samples have but a single lens; the fourth, a double lense. The lens or lenses in each instance fold into an outer metal or hard-rubber covering or case, which protects the article and adapts it for carrying in the pocket. All of these articles have magnifying properties, the double-lens articles, however, to a greater extent than the others.

The question to be solved, therefore, in this case is, Are these articles more aptly classified under paragraph 94 as microscopes than under paragraph 93 as optical instruments?

We quote the following from the testimony of one of the Government witnesses:

Q. Having in mind the uniform and general meaning of the trade term "microscopes" you come in contact with in buying at wholesale, will you state whether the Exhibits 1 to 4 are included or excluded within the term "microscopes"?—A. We do not consider these microscopes, if that will answer your question. We do not speak of them as microscopes. * * * We call these magnifying glasses or pocket loupes; folding loupes.

Q. You would? What do the people who sell them to you at wholesale call them?—A. Well, I never have bought them from anybody who represented them to me as microscopes. Always called pocket magnifying glasses.

But on cross-examination, in answer to the following question—

Q. If you were asked for a pocket microscope what would you offer the person that undertook to buy it?

he said:

If a person asked for a pocket microscope I would take him to our pocket magnifying glasses.

Q. Show him these articles?—A. Yes.

The following quotation is from the cross-examination of another Government witness:

Q. You make the single-lens type pocket microscope or magnifier?—A. Yes, sir.

Q. And whenever the term "pocket microscope" is used it refers to that article, does it not?—A. Yes, sir.

The three witnesses testifying on behalf of the protestants state that these articles are microscopes of the class known as "simple microscopes" as distinguished from "compound microscopes"; and that these are pocket microscopes.

Mr. Lorsch, a member of the importing firm, testified that an optical instrument is one that is used to improve the vision, or an instrument through which the rays of light are either converged or concentrated; that the same is true of these instruments, and that they are within the term "optical instruments" as are telescopes or microscopes, both of which are provided for in the tariff act. He also said that a microscope is an instrument which magnifies an object; that the articles in question are used for the examination of minerals or botanical objects or for magnifying printed matter; and that "microscope" is the general term covering the whole class of

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microscopes and magnifying glasses. He also testified that a magnifying glass is a microscope and a microscope a magnifying glass.

In the matter of protests 752181, etc., of J. Bliss & Co., G. A. 7697 (T. D. 35220), we held that certain nautical instruments were not within the provision for "optical instruments" in paragraph 93, and defined the class of instruments covered by that paragraph. In this we were affirmed by the Court of Customs Appeals in United States *v.* Bliss (6 Ct Cust. Appls., —; T. D. 35980). In that case the court said that in a great many respects Ganot's definition of an optical instrument as "any combination of lenses, or of lenses and mirrors" accords with the common meaning of the term. That definition divided "optical instruments" into three classes, viz:

1. Microscopes, which are designed to obtain a magnified image of any object whose real dimensions are too small to admit of its being seen distinctly by the naked eye.

(It will be noted that this definition very aptly applies to the merchandise in question.)

2. Telescopes, by which very distant objects, whether celestial or terrestrial, may be observed.

3. Instruments designed to project on a screen a magnified or diminished image of any object which can thereby be either depicted or rendered visible to a crowd of spectators; such as the camera lucida, the camera obscura, photographic apparatus, the magic lantern, the solar microscope, the photo-electric microscope, etc. The two former classes yield virtual images, the last, with the exception of the camera lucida, yield real images.

Two of these classes, the telescopes and microscopes, are *eo nomine* provided for in the tariff act, and it would seem as though the provision for "optical instruments" was a sort of "catch-all" to cover such of those instruments as are not specifically mentioned therein. Microscopes being provided for, and the merchandise in dispute being a simple microscope, we think it unquestionably falls within the provisions of paragraph 94. (See also in the matter of protest 770481 of F. A. Hardy & Co., Abstract 38900, December 6, 1915; in the matter of protest 783162 of Schieffelin & Co., Abstract 38941, December 13, 1915.)

The protest is sutained and the collector's decision reversed.

(T. D. 36175—G. A. 7860.)

Waterproof raincoats—Component material of chief value.

1. Waterproof raincoats found upon analyses to be made of wool, cotton, and india rubber, and of wool, cotton, silk, and india rubber, *held*, subject to duty as wearing apparel according to the component material of chief value.

2. In ascertaining the component material of chief value the condition of the several components must be taken and valued in the condition in which they were severally ready to be combined and made into the completed article.

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3. Whenever a mixed cloth appears as one of the components of a completed article its value as one of the units shall be considered as though it were composed wholly of its component material of chief value.—Seeberger *v.* Hardy (150 U. S., 420) and United States *v.* Meadows (2 Ct. Cust. Appls., 143; T. D. 31665) cited and followed.

BROWN, *General Appraiser*, dissenting, holds: (1) That the value of the all-cotton cloth should be added to the value of the cotton threads in the mixed wool and cotton cloth with which it is joined by the rubber, and compared with the value of the wool threads in the mixed cloth, and with the rubber; (2) that in the other class of two mixed cloths joined by the rubber composition, the total value of the wool, cotton, and silk threads wherever appearing should be taken and compared with each other and with the rubber.

United States General Appraisers, New York, February 17, 1916.

In the matter of protest 760778 of True Fit Waterproof Co. against the assessment of duty by the collector of customs at the port of New York.

[Modified.]

Walden & Webster (*Henry J. Webster* and *Edward F. Jordan* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Chas. D. Lawrence*, *Leland N. Wood*, and *Luke Lamb*, special attorneys), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers; BROWN, G. A., dissenting).

MCCLELLAND, *General Appraiser:* The merchandise in question consists of waterproof raincoats returned as being wool, cotton, and india rubber, and wool, cotton, silk, and india rubber, wool being the component material in chief value of each.

The collector assessed duty on these garments at the rate of 35 per cent ad valorem under paragraph 291 of the tariff act of 1913 as wearing apparel composed in chief value of wool, and the protestants claim that duty should have been assessed at the rate of 30 per cent ad valorem under either paragraph 256, 261, or 266 of the same act.

Counsel for protestants in their brief limit the protest claims to items 355, 356, 357, 358, 8010, 8011, 8021, 8051, 8052, 8233, 8311, 8350, 8351, 8380, 8382, and 8383.

Three sets of analyses were made by the Government analyst of samples of each of the items involved, and these analyses we find with the official papers forming part of the record that comes to us on which to base a decision.

Another paper with the record, prepared by the analyst and approved by the appraiser, classifies these analyses as follows:

1. *Analyses No. 5336 to No. 5367.*—All cotton cloths figured as cloth; mixed cloth figured as threads.

2. *Analyses No. 494 to No. 525.*—All cloths figured as cloth according to the chief value.

3. *Analyses No. 1839 to No. 1870.*—All cloths figured as cloth; mixed materials figured from cloth prices and divided.

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The following are copies of three analyses, being one from each of such sets:

Analysis No. 5336. Sample marked 760778. No. 8332. Raincoating. Prices, February and May, 1914.

	Mgrs.
Cotton and wool fabric, cotton chief value	12,335
Cotton and silk fabric, silk chief value	6,175
Rubber compound, dressing, etc	15,355
	33,865

		Per ko.		
Cotton thread 24/1,	8,760 at Frs	2.40	21,024	
Cotton thread 24/1,	5,655 at Frs	2.40	13,572	
				34,596
Wool thread 16/1,	3,575 at Frs	6.00		22,450
Silk grege pure,	520 at Frs	69.00		35,880
Rubber compound,	15,355 at Frs	1.30		19,962
	33,865			112,888

PROPORTION OF VALUE.

	Per cent.
Cotton	30.64
Wool	19.89
Silk	31.78
Rubber	17.69
	100.00

Silk chief value.

Analysis No. 499. Sample marked 760778. No. 8233. Raincoating.

[Analyzed sample, 33,245 mgrs.]

		Per ko.	
Wool and cotton cloth, Wool chief value.	6,850 at Frs	12.00	82,200
Cotton cloth,	7,630 at Frs	7.00	53,410
Rubber compound, dressing, etc.,	18,765 at Frs	1.30	24,395
	33,245		160,005

PROPORTION OF VALUE.

	Per cent.
Wool	51.37
Cotton	33.38
Rubber	15.25
	100.00

Wool chief value.

Analysis No. 1846. Sample marked 760778. No. 355. Raincoating.

Cotton and wool cloth:		
Cotton, 56.35 per cent } Value of cloth 103,800.		58,491
Wool, 43.65 per cent }		45,309
Rubber compound, etc		15,145
		118,945

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PROPORTION OF VALUE.

	Per cent.
Cotton	49.17
Wool	38.09
Rubber	12.74
	100.00

Cotton chief value.

The calculations shown in analysis No. 5336 are based upon the finished cotton cloth and a separation of the mixed cloths back to the thread condition. When the threads are thus separated the value of the cotton threads is added to the value of the finished cotton cloth, and this combined value is taken as one unit and compared with the value of the wool threads as another unit to determine the component material of chief value.

The calculations in analysis No. 499 are based upon the finished cloths; that is to say, the finished cotton cloth as one unit and the finished mixed cloth according to the component material of chief value therein as the other unit.

A detailed analysis of this wool and cotton mixed cloth, which serves as an illustration of the analyst's method of determining the value of each component by percentages, is found in the statement of analyses numbered 499/501, marked "A," and is as follows:

Analysis No. 499/501. Sample marked 760778.

Wool and cotton cloth—6,850 mgrs.		
Wool thread 20/1,	5,400 at Frs 6.00	32,400
Cotton thread 28/1,	1,450 at Frs 2.80	4,060
	6,850	36,460

Wool chief value.

The calculations in analysis No. 1846 are based upon the value of the finished cotton cloth, and the cotton threads found in the mixed material figured from cloth prices as one unit; the value of the cotton threads found by the separation being added to the value of the cotton cloth, and the combined value compared with the value of the wool threads, to determine the component material of chief value. The difference in the method of calculation used in this analysis and that used in No. 5336 is that in this analysis every element of cost in making the thread into a cloth is added to the thread values.

The trend of the record indicates clearly that the only protest claim relied upon is that made under paragraph 256, and it seems to be accepted by counsel that the aforesaid analyses are to form the basis for the findings upon which the classification of the several items involved shall be determined, depending only upon which of the methods employed by the analyst in calculating his values shall be found by the board as being in conformity with the statute. In our discussion of the question the value given in the several analyses

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for rubber will be disregarded, not because the percentage in value of rubber found in each of the samples is negligible, but altogether because in each instance its value is considerably lower than the value of each of the other component materials.

Paragraph 386 contains the following provision:

And the words "component material of chief value," wherever used in this section, shall be held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article.

As an original proposition there might be room for a variance of view as to how the classification of an article composed of two or more materials should be determined under the provisions found in paragraphs 256 and 291, *supra*. It might be urged with some degree of reason that as to the merchandise in the case at bar, the materials of which it is composed being wool, cotton, silk, and rubber, should be separated and reduced to the respective conditions in which they were before being manufactured into articles, either by themselves or in combination with other articles or materials, and in such condition their values be ascertained for comparison; but it would seem that there is no longer room for such an argument in view of the construction placed upon similar provisions by the courts.

Two leading cases, Seeberger *v.* Hardy (150 U. S., 420) and United States *v.* Meadows (2 Ct. Cust. Appls., 143; T. D. 31665), seem to have laid down a rule for the determination of the component material of chief value in a completed article which must be accepted as controlling by this and other inferior judicial tribunals in the determination of such a question. In the former case the question was as to the classification of opera glasses composed of lenses in a metal frame with an outer covering of shell. There it was held that the condition of each component as it entered into the article must be taken as the basis for valuation. That is to say, it was held that the correct method for valuing the shell and the other components separately was to take each of them in condition ready to be manufactured into the opera glass, including the cost of labor necessary to bring each of them to the condition where they were ready to be united. In the latter case the question involved was the classification for duty of slippers made of leather and cotton cloth. The soles and the heel of the slipper were of leather and the uppers consisted of several thicknesses of cotton cloth cut to shape. In that case it was held that the expense of cutting the pieces of the finished cotton cloth, and of sewing them together and bringing them to the condition ready to be united to the leather of the slipper, were to be considered as elements in the value of the cotton cloth as a component material, as was the expense of shaping the soles and heels

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ready to be united with the cotton cloth to form the slipper to be considered as a part of the cost of the leather as the other component material of the slipper.

Following this rule the materials entering into these waterproof raincoats must be taken in the condition in which they were united to make the finished cloth from which the coats were made and their respective values found accordingly.

As we have already said, in the second group of analyses, 494 to 525, the respective values of the component materials covered thereby were arrived at by the analyst upon this theory; and as to the items involved these analyses show the following:

Items 355, 356, 357, 358, and 8351, covered by analyses numbered 501, 502, 503, 504, and 497, are found to be in chief value of cotton.

Items 8010, 8011, 8021, 8051, 8052, 8233, 8380, 8350, 8382, and and 8383, covered by analyses numbered 494, 495, 496, 498, 499, 500, 521, 523, 524, and 525, are found to be in chief value of wool.

Item 8311, covered by analysis No. 516, is found to be in chief value of silk.

The claim for duty at the rate of 30 per cent ad valorem under paragraph 256, *supra*, is sustained as to the items found to be in chief value of cotton.

The collector's assessment of duty is affirmed as to the items found to be in chief value of wool.

As to item 8311, being in chief value of silk, the protest is overruled without affirming the action of the collector.

DISSENTING OPINION.

BROWN, *General Appraiser:* The merchandise consists of waterproof garments (raincoats). The appraiser returned items A as being composed of wool, cotton, and india rubber, and of wool, cotton, silk, and india rubber, wool the component material of chief value. The goods were classified by the collector at 35 per cent ad valorem under paragraph 291, act of 1913, reading:

> Clothing, ready-made, and articles of wearing apparel of every description, * * * made up or manufactured wholly or in part, and not specially provided for in this section, composed wholly or in chief value of wool.

The protestants claim said merchandise is composed in chief value of cotton and is properly dutiable at 30 per cent ad valorem under paragraph 256, reading:

> Clothing, ready-made, and articles of wearing apparel of every description, composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, or of cotton or other vegetable fiber and india rubber, * * * not otherwise specially provided for in this section.

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The protest is limited to items enumerated below covering waterproof garments, which may be divided into three classes:

Class 1.—Composed of a single cloth of cotton and wool, rubberized (items 355, 356, 357, and 358).

Class 2.—Composed of two cloths, one a mixed cloth of wool and cotton, the other a cloth wholly of cotton (items 8010, 8011, 8021, 8051, 8052, and 8233).

Class 3.—Composed of two mixed cloths, one of wool and cotton and the other of cotton and silk (items 8311, 8350, 8351, 8380, 8382, and 8383).

The cloths composing the garments in classes 2 and 3 are united or joined by an adhesive rubber compound.

There are three analyses in the record made upon three different theories or methods. One, upon the theory contended for by the Government, takes the value as cloth wherever cloth appears and attempts to apportion the value of the finishing and weaving to the thread values, as follows: In class 1 the value of the single cotton and wool cloth as a finished article is taken and the cost of weaving and finishing is apportioned among and added to the value of the cotton and wool threads therein contained in the proportion of the thread values found. In class 2 the value of the single cotton cloth is taken as cloth and to this is added the cotton threads in the mixed fabric, plus its proportion, by value, of the cost of weaving and finishing said mixed fabric, and the total cotton value thus ascertained is compared with the wool value in the mixed cloth obtained in the same way by adding to the wool thread value the proportion of weaving and finishing the mixed cloth corresponding to the wool thread value. In class 3 the value of the weaving and finishing the two mixed cloths is proportionally distributed among the thread values of the cotton, wool, and silk according to the relative thread values of each. By this method, if found to be legally applicable, wool would be the component material of chief value in certain of the articles.

Second, an analysis upon the theory of the importer is made which compares the values of the cotton, wool, and silk threads, excluding the cost of weaving and finishing in every case, except partially in class 2, where the value of the all-cotton cloth is taken at the cloth value, including the weaving and finishing, and to that is added the value of the cotton threads before they are woven and finished in the mixed cotton and wool cloth, and the total value thus obtained is compared with the value of the wool threads in the mixed fabric. By this method, if found to be legally applicable, cotton would be found to be chief value in most of the items in dispute.

Here it may be noted that in class 2, the only class where the all-cotton cloth appears, both sides take it in its finished state as

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cloth (including the weaving and finishing) as the condition in which the material (cotton) in that form as a cloth comes into the raincoat and is found therein.

It may be further noted that the apparent difficulty in this case arises solely from the presence of this all-cotton cloth in class 2, causing cotton to appear in two forms in class 2—first in the form of the all-cotton cloth, and, second, in the form of the cotton threads in the mixed wool and cotton fabric to which the all-cotton cloth is fastened by the rubber material.

The provisions of the statute (paragraph 386) governing classification according to the component material of chief value read:

> 386. * * * And on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material of chief value; and the words "component material of chief value," wherever used in this section, shall be held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article.

This identical provision has appeared in all the tariff laws since and including the act of 1890.

The rule for determining the component material of chief value has been established by the following leading cases.

In Seeberger *v.* Hardy (150 U. S., 420) in determining the component material of chief value of opera glasses composed of lenses in a metal frame, with an outer covering of shell, Mr. Justice Brown said:

> We think the theory of the importer was the correct one, and that the value of the materials should be taken at the time they are put together to form the completed glass. * * * The position of the Government seems to be that the value of the component materials should be taken as they go into the hands of the manufacturer. * * *
>
> While it may be true that to a certain extent the Government may be at the mercy of the importers' witnesses in estimating the value of the labor put upon the raw material as it goes into the completed article, this difficulty can not be allowed to defeat the plain object of the enactment. Such difficulties were doubtless foreseen, as they did not appear to be of such magnitude as to prevent Congress, in the act of 1890, from providing particularly that "the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article," and thus putting the question at rest. We regard this as merely declaratory of the law.

In G. A. 6112 (T. D. 26609), where the component materials used in making the article consisted of cotton and varnish, the varnish being made of linseed oil and copal, Judge De Vries held that it really consisted of three materials, to wit, cotton, linseed oil, and copal, stating that—

> In the ascertainment of component materials for the purpose of determining chief value no *composition* of two or more materials can be used, but the ascertainment must be had by measuring and comparing each "single" component material. The varnish being composed of two single component materials is itself a composition or

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manufacture and can not, therefore, under the law be compared with any other "single component material." because it itself is not a single component material but a composition of two materials, to wit, copal and linseed oil.

This decision was reversed, the Circuit Court holding that the varnish, not the linseed oil and copal separately, was the component material (Kraemer *v.* United States, 146 Fed., 148; T. D. 27185), but on appeal the Circuit Court of Appeals in United States *v.* Johnson (154 Fed., 39; T. D. 28007) reversed the Circuit Court, following the rule laid down in Seeberger *v.* Hardy (150 U. S., 420), and sustaining the conclusion reached by Judge De Vries holding cotton to be chief value. In United States *v.* Hoeninghaus (137 Fed., 478; T. D. 26125) it was held that the value of the component material as found in the article included the cost of bringing the material to the proper shape for its use in the specific article, which in that case included the cost of warping the silk, a process preliminary to the weaving process, reversing the decision of the board in G. A. 5335 (T. D. 24423) holding that the cost of warping, being a process in the fabrication of the fabric, should be disregarded.

In G. A. 6296 (T. D. 27155), the facts of which are somewhat analogous to the case at bar, Judge De Vries found and held as follows:

> We find as facts herein that the merchandise consists of a cotton yarn and a so-called flax yarn made of flax and jute. We further so find that as compared one with the other cotton predominates in value. * * *
>
> The so-called flax yarn that was introduced in the manufacture of the goods is not a *single* component material as required by the statute, but is itself a manufacture of two single component materials, to wit, flax and jute.
>
> * * * * * * *
>
> It seems to us clear and beyond controversy that the *single* component materials going to make up the flax yarn in the first instance are flax and jute, and the fabric in the second are cotton, flax, and jute.

It is apparent in this case that Judge De Vries came to the conclusion that cotton was chief value by comparing the value of the cotton yarn contained in the crash cloth there under consideration, first with the value of the flax and then with the value of the jute, excluding the labor of making the flax and jute into the so-called flax yarn, which was really a yarn composed of flax and jute. Thus he did not do what is contended here by the Government should be done, to wit, apportion the value of making the flax and jute into the combination yarn between the two materials flax and jute, but the value of the flax and jute was taken by him as of the condition in which it went into the combination yarn, which was subsequently united with the cotton yarn into the crash.

In G. A. 6568 (T. D. 28045) and G. A. 6571 (T. D. 28048) it was held that the cost of labor in putting materials together to make the completed article is not part of the value of such materials.

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In United States *v.* Meadows (2 Ct. Cust. Appls., 143; T. D. 31665) the court, after reviewing the authorities, said (pp. 147 and 149):

Here the slippers are made of leather and cotton cloth; the leather comprises the soles and the heels; whether the soles consist of more than one thickness, and if so how the same are fastened together, does not appear. The uppers consist of several thicknesses of cotton cloth cut to shape. It is conceded that the expense of so cutting these pieces of cloth attaches to the cost of the cotton as the component material; that the expense of shaping the soles and heels attaches to the cost of the leather as the other component material; and that the expense of attaching the uppers to the soles and heels is a part of the expense of manufacturing the slippers and so attaches to neither the leather nor the cotton as a component material.

* * * * * * *

In the manufacture of the slippers in this case the cotton had not reached the condition which required nothing more to be done thereto before being united with the leather until the pieces of cloth were sewed together. The expense of sewing them, therefore, attaches thereto and renders cotton the component material of chief value, regardless of the name by which these pieces of cotton were called after sewing had been accomplished. They may be called uppers, or they may be called manufactures of cotton, as were the glass, metal, and shell in the Seeberger case termed manufactures of these articles respectively, but the fact remains, nevertheless, that it is the *cotton* that is the component material.

The Court of Customs Appeals in United States *v.* Gredelue (5 Ct. Cust. Appls., 298; T. D. 34476), where the merchandise was goblets, the bowl being blown glass with a plain stem and foot molded thereon, said (p. 300):

In order to determine the component of chief value, the value of the bowl should have been taken as of the time when it became blown glass, and the value of the stem and foot as of the time when they were given their form by molding. Once the bowl was blown and the stem and foot were fashioned, the cost of further processing was chargeable to the whole article and not to its parts.

The rule, then, for finding the component material as derived from the authorities may be stated as follows:

Each single material must be taken and each taken in the condition in which, as such single material, it is ready to be united into the article, and its value must include all the labor of processing of such single material expended up to that time, but the moment such single material commences to be united with or mixed with or woven into some other component material so as to lose its original identity, then the labor of uniting, mixing, weaving, or the like becomes labor upon the completed article to make it and finish it and ceases to be work upon a component material to bring it into the state for assembling or union into the article itself. Hence, such labor of uniting, mixing, weaving, or whatever it may be, is to be excluded in finding the component material and not apportioned among any of the single materials.

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Considering, first, class 1, the single cloth composed of cotton and wool, rubberized, as all the analyses under every conceivable theory sustain the claim in the protest for those items, that class need not be further considered.

Class 2, however, presents a different situation. Here we have, as before stated, an all-cotton cloth adhered to a mixed cotton and wool cloth by what we may call a composition rubber binder. Nevertheless, the materials as found in class 2 are still only cotton, wool, and rubber. These three are the basic materials whose relative proportions of value in the condition as assembled into the raincoats must determine the classification. The material cotton is found in two forms. In the cotton cloth portion it appears as cotton cloth and in the mixed fabric it appears as cotton threads.

In other words, the cotton in the all-cotton cloth comes into the raincoats in the condition of cotton cloth, and is found in the article as cotton cloth, while the cotton and wool composing the mixed fabric come into the raincoats and are found therein as part of the mixed fabric in the form of wool threads and cotton threads.

That the cotton in the cotton cloth portion must count in value as the cotton cloth itself, is required by the Supreme Court's ruling in the case of Seeberger *v.* Hardy, where, to ascertain the material of chief value in the opera glasses, it was held that the value of the glass must include the labor of polishing, the value of the shell, the labor of perfecting, and the value of the metal, the labor of finishing—the condition of each material as found in the article.

The cotton and wool in the mixed cloth portion can not be taken as an entirety as a mixed cloth and that value divided in proportion to the relative amounts of cotton thread value and wool thread value contained therein, as claimed by the Government, which would make wool chief value in most of the raincoats in class 2. This is precluded by the view of Judge De Vries in the catheter case, where he did not take the varnish as varnish, but split it into its component materials, cobal and linseed oil. It is likewise precluded by the slippers case, where the leather sole was taken as leather made into a sole as against the value of the two portions of the cotton upper *plus the labor of sewing the two cotton portions of the upper together.* This extra sewing together of the two cotton portions thus caused cotton to be chief value.

Therefore, if we are to follow the application of the Supreme Court's rule as made by these binding authorities, we must hold cotton to be chief value here even if it involves adding the value of the made-up cotton cloth, as it separately appears, to the value of the cotton threads in the mixed wool and cotton material.

Further, in the opera-glass case, the cost of uniting the glass, tortoise shell, and metal together to form the completed opera glasses

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was, under the rule, excluded from consideration, that being the value of combining the component materials, which throws no light on their relative value. Likewise, the cost of placing the varnish upon the catheter was excluded and the cost of sewing the leather sole to the cotton upper was excluded in the catheter and slipper cases.

So, in the case at bar, we must exclude the cost of bringing the three component materials, wool, cotton, and rubber, into the condition of a raincoat, which must necessarily exclude the cost of combining the wool and cotton threads into the mixed material forming a part thereof, as well as the cost of fastening the two cloths together by means of the rubber, but which still leaves the all-cotton cloth to be taken as cotton cloth, because the labor of weaving and finishing the cotton threads contained therein into the all-cotton cloth did not mix or combine said threads with any other component material so as to cause them to lose their identity as cotton. The labor of weaving and finishing the all-cotton cloth was clearly expended only upon the single material, cotton.

In conclusion upon this branch of the case, that is, in dealing with class 2, the view contended for in the Government brief presents insuperable difficulties, for if the cost of weaving the cotton threads in the mixed cotton and wool cloth is to be distributed between the wool and cotton threads contained therein, upon what basis is such distribution to be made?

Shall it be divided between the threads according to their relative value or according to their relative quantity?

Suppose the value of the wool threads was three times the value of the cotton threads and they were equally divided in quantity; shall we then divide the cost of weaving the cotton and wool threads together and of finishing the cloth in the proportion of three-fourths to the wool component and one-fourth to the cotton component, or shall we divide it equally between the wool and cotton? As much could be said for one method as for the other.

This inherent difficulty attending any effort to fairly divide such cost between the cotton and wool components demonstrates that it should not be divided at all, and further conclusively shows that such work is in reality not work upon two single component materials, but work done after the components are assembled and ready to be joined into the article, and therefore work the value of which throws no light whatsoever upon the relative value of the single components themselves.

Turning, then, to class 3, composed of two mixed cloths, one of wool and cotton and the other of cotton and silk, manifestly we must take the relative value of the wool, cotton, and silk threads in the entire article in the condition as threads ready to be woven and finished.

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Applying the above principles to the items involved in the protest, as shown by the analyses made on that method, we should find, in my opinion, that the garments covered by all of the items claimed on and enumerated above, with the exception of items 8382 and 8383, are in chief value of cotton, and the protest should be sustained as to said items. As to items 8382 and 8383, the protest should be overruled.

The above was written upon the theory that the issue here was between the contention of the importer and the contention of the Government counsel. The majority opinion, however, sustains the action of the collector, which was based upon still a third theory, which theory now requires discussion.

That theory involves two consecutive processes of finding chief value. First, wherever a mixed cloth appears in the raincoat it gets rid of all difficulties by taking such mixed cloth as if it were all wool, all cotton, or all silk, according to which is the material of chief value *in said mixed cloth.* And then, by this construction having reduced the said mixed cloths to simple cloths by construing them to be each of one single material, it starts to find the material of chief value in the raincoat.

Thus in dealing with class 2 it takes the mixed wool and cotton cloth as if it were an all-wool cloth and compares its value as such with the value of the all-cotton cloth, and thus finds the items in that class to be wool chief value.

And similarly in dealing with class 3, it takes the mixed wool and cotton cloth as if it were all wool and compares it with the mixed cotton and silk cloth on the other side as if the latter were all silk, and thus finds most of the items in that class to be wool chief value.

Of the items so dealt with by the majority opinion, the first six, namely, 8010 (on analysis 500), 8011 (on analysis 521), 8021 (on analysis 523), 8051 (on analysis 524), 8052 (on analysis 525), and 8253 (on analysis 499), are raincoats composed of one all-cotton cloth and one mixed cloth of wool and cotton, adhered together by a rubber composition.

As to these six items, in finding the value of the single material, cotton, the majority opinion not only fails to count the cotton threads in the mixed cloth portion as part of the cotton value, but makes them wool threads by construction, and then counts them as part of the value of the wool component. The mere statement of that proposition is its own answer.

When we are figuring the relative value of the three materials—rubber, wool, and cotton—as they go into the raincoat and are found therein, it manifestly will not do to transform one portion of the cotton component into wool and count it against the other portion

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of the cotton component. The appearance in the raincoat of the component cotton in two forms, one portion as the all-cotton cloth and the other portion as the cotton threads in the mixed cloth, can, in my opinion, produce no such result.

The remaining items found by the majority opinion to be in chief value of wool, items 8380, 8350, 8382, and 8383, consist of two mixed cloths, one of wool and cotton, and the other of cotton and silk (heretofore denominated as class 3). As to these the collector's theory is still applied as follows:

Item 8380 (classified on analysis 496), the value of the mixed wool and cotton cloth (including the weaving and finishing), is taken as if it were all wool, because the wool threads therein are more valuable than the cotton threads. By this construction 51.49 per cent of wool is found. This is compared with the value of the mixed silk and cotton cloth which, because the silk threads predominate in value, is taken as all silk (including again the cost of weaving and finishing). By this construction silk becomes 36.51 per cent, the rubber compound being the other 12 per cent.

Yet by thread value alone the total cotton threads in both pieces of cloth are greater in value than either the silk threads or the wool threads. (See preliminary portion of analysis No. 496 dealing with this item, 8380.)

This example is particularly instructive because it shows that the method adopted makes cotton here disappear entirely as a component material, so that not only are the cotton threads in the mixed wool and cotton cloth not added to the cotton threads in the silk and cotton cloth, but the component material, cotton, does not figure at all and is never compared with the other component materials.

No such theory of finding the material of chief value can obtain as matter of law, which so mixes and confuses the various components. The majority opinion touches very lightly upon this phase of the subject, vouchsafes no argument in favor of such method, and cites no authority in support thereof.

Similarly, item 8350 is classified under analysis 498 by the same method of construction and line of reasoning, showing wool 58.05 per cent, silk 33.86 per cent, rubber 8.09 per cent, and no cotton component whatsoever.

So also in item 8382 (under analysis 494), item 8350 (under analysis 498), and item 8383 (under analysis 495), cotton again disappears entirely and wool chief value is arrived at in the same way.

The above considerations strengthen the view that the theory adopted by the collector can not be used, and that the theory advanced in the first part of this opinion should be followed.

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(T. D. 36176—G. A. 7861.)

Steel blooms—Steel strips.

1. Steel blooms differ from steel bars in that the former have not the regular and uniform surface dimensions by which the latter are known and recognized in the trade and commerce of this country. Therefore, blooms which have been made by the Bessemer process, but which have not been hammered sufficiently to transform them into the articles commercially known as bars, are free of duty under the specific provision for "blooms" in paragraph 613 of the act of 1913.

2. Steel strips measuring more than 5 inches in width are not specifically provided for, and are accordingly relegated for classification to the general provision for "strips of iron or steel, not specially provided for in this section," in paragraph 105 of said act.

United States General Appraisers, New York, February 18, 1916.

In the matter of protests 768560, etc., of Edgar T. Ward's Sons against the assessment of duty by the collector of customs at the port of Boston.

[Reversed in part; affirmed in part.]

Comstock & Washburn and *Carroll E. Pillsbury* (*Albert H. Washburn* of connsel) for the importers.

Bert Hanson, Assistant Attorney General (*Frank P. Wilson*, special attorney), for the United States.

Before Board 2, FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating.

FISCHER, *General Appraiser:* These protests cover steel imported in two forms, namely, as so-called blooms and as steel strips. Duty was levied on the former at the rate of 8 per cent ad valorem under paragraph 110 of the act of 1913 as Bessemer bar steel, and on the latter at the rate of 15 per cent ad valorem under the same paragraph as steel made by the crucible process and finished by rolling.

The importers claim that the blooms are properly entitled to free entry under the following paragraph of said act:

613. Steel ingots, cogged ingots, blooms and slabs, die blocks or blanks, and billets, if made by the Bessemer, Siemens-Martin, open-hearth or similar processes, not containing alloy, such as nickel, cobalt, vanadium, chromium, tungsten, or wolfram, molybdenum, titanium, iridium, uranium, tantalum, boron, and similar alloys.

And that the strips are properly dutiable at the rate of 8 per cent ad valorem under the following provision in paragraph 110 of said act:

110. Steel bars, and tapered or beveled bars; * * * all descriptions and shapes of dry sand, loam, or iron molded steel castings, sheets, and plates; all the foregoing, if made by the Bessemer, Siemens-Martin, open-hearth, or similar processes, not containing alloys, such as nickel, cobalt, vanadium, chromium, tungsten or wolfram, molybdenum, titanium, iridium, uranium, tantalum, boron, and similar alloys * * *.

Or at the rate of 12 per cent ad valorem under the following provisions of paragraph 105 of said act:

105. Boiler or other plate iron or steel, and strips of iron or steel, not specially provided for in this section; sheets of iron or steel, common or black, of whatever dimen-

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sions, whether plain, corrugated, or crimped, including crucible plate steel and saw plates, cut or sheared to shape or otherwise, or unsheared, and skelp iron or steel, whether sheared or rolled in grooves, or otherwise * * *.

The claim alleged by virtue of the provisions of paragraph 613 is confined to the articles represented by the invoice designation thereof as "Swedish Bessemer blooms, 0.90 carbon." They are, specifically, the first item on the invoice covered by entry No. 22548 and protest 768738, and the first items on each of the respective invoices covered by entries Nos. 825 and 24596 and protest 769877.

The evidence in the case conclusively shows that these so-called blooms have been made by the Bessemer process and that they do not contain any of the alloys mentioned in said paragraph 613; that steel bars are made from blooms by either hammering or rolling; that while the particular articles here under consideration were probably in the form of square blooms before they were hammered partially into the shape of bars as imported, they were nevertheless still commercially known and dealt in as blooms, not having been hammered sufficiently to transform them into bars; that these blooms differ from bars in that the former have not the regular and uniform surface dimensions throughout their entire lengths which must always be present in the latter before they are known and recognized throughout the trade and commerce of this country as bars; that this difference in the condition of the two classes of articles is the determining factor by which blooms and bars are distinguished by such trade; and that the commercial understanding as to what constitutes a bloom in no way differs from the common and ordinary meaning thereof. This term is defined by Webster as "a large bar of steel formed directly from an ingot."

Inasmuch, therefore, as it is conclusively shown that the above enumerated items represent blooms and not bars, free entry therefor is specifically and *eo nomine* provided for in paragraph 613, and we so hold.

The claims alleged in the protests under paragraphs 110 and 105, respectively, are confined by the testimony to the items described on the invoices as steel strips measuring more than 5 inches in width. The specific items covered by protest 768560, entry 17765, are Nos. 391, 392, 404, 405, 406; by protest 768739, entry 19899, Nos. 443, 444, 445, 446, 447, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, and 469; by protest 768738, entry 21837, Nos. 473, 474, 475, 476, 477, 478, 479, 480, and 481.

Concerning this latter class of articles these facts are proven of record: That they are regarded in the trade as steel strips; that they measure more than 5 inches in width and vary in length from 6 feet to more than 100 feet; that of the two samples in evidence one is made by the Bessemer process and the other by the Siemens-Martin

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open-hearth process, and that both have been finished by rolling; that the former has been neither tempered nor polished, while the latter has been both tempered and polished; that neither article contains alloys such as tungsten, molybdenum, or wolfram; that the merchandise was not made by the crucible, electric, or cementation processes, but that it has been finished by the process known as "strawing," a method of coloring the articles by heat.

It will be noted that the claim alleged under paragraph 110 is that these articles are properly dutiable and should have been classified by the collector as steel "plates." But the importers' own witness clearly testified that the merchandise consists of steel strips, and that it is so regarded in the trade and commerce of this country. There is, therefore, no merit in the contention made by virtue of the provisions of paragraph 110.

It being further established of record that the strips in question are more than 5 inches in width, they are plainly excluded from the provision in paragraph 114 for "steel in strips not thicker than number 15 wire gauge and not exceeding 5 inches in width, whether in long or short lengths, in coils or otherwise, and whether rolled or drawn through dies or rolls or otherwise produced."

Neither are they included in the provision in paragraph 109 for "steel * * * strips * * * when galvanized or coated with zinc, spelter, or other metals, or any alloy of those metals."

The only remaining tariff provision, therefore, which would aptly include the steel strips here under consideration is the general provision in paragraph 105 for "strips of iron or steel, not specially provided for in this section." That alternative claim alleged in the protests is therefore held to be well founded.

The protests are accordingly sustained to the extent hereinabove indicated; but in all other respects they are overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 2, FEBRUARY 15, 1916.

No. 39254.—Protest 795049 of Central Vermont Railway Co. (St. Albans).

LEATHER BOARD.—Merchandise classified at 25 per cent ad valorem under paragraph 328, tariff act of 1913, is claimed entitled to free entry as leather board under paragraph 530.

Opinion by FISCHER, G. A. The commodity, which contains 82 per cent of leather and is used exclusively for making heels for shoes, was found to be leather board, free of duty under paragraph 530, as claimed. Abstract 38973 followed.

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No. 39255.—Protests 783593, etc., of Arthur Geoffroy, and protests 754432, etc., of Hanks & Montgomery (New York).

FIGURED COTTON CLOTH.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 252.

Opinions by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501), the cotton cloth in question was held dutiable as woven figured under paragraph 252.

BEFORE BOARD 3, FEBRUARY 15, 1916.

No. 39256.—Protest 784530 of Wilmot R. Evans, jr. (Tampa).

PANAMA HATS—VALUE.—Panama hats classified at 40 per cent ad valorem under paragraph 335, tariff act of 1913, as trimmed hats, are claimed dutiable at 25 per cent under the provision in the same paragraph for hats not blocked or trimmed. They were entered at a value of $6 and appraised at $10.

WAITE, *General Appraiser:* * * * There is a communication from the appraising officer at the port of Jacksonville, where the goods were entered, made some time after liquidation, wherein he states he considers the appraised value of $10 too high and has therefore reduced it to $6. As stated above, no testimony has been given. The importer contents himself with stating in a letter that he will be able to verify everything he has set forth in his communication. This, however, we can not take as evidence upon which to decide the case. We are of the opinion that the appraiser has no right, authority, or power to amend his appraisal. There is nothing in the case to show whether the hats were blocked and trimmed, or whether they were not, except a statement in the protest to the effect that they were untrimmed, which is apparently contrary to the finding of the collector. Whether they had been blocked there is nothing to indicate.

From the whole record we are of the opinion that there is nothing upon which we can disturb the finding of the collector either as to the classification or the value adopted by him as the basis of his liquidation. The protest is therefore overruled.

No. 39257.—Protest 789605-57688 of Chas. D. Stone & Co. (Chicago).

CURRANTS, CRUSHED.—Merchandise invoiced as currants from Greece, described by the appraiser as crushed or broken currants imported in wooden packages, and classified at 1½ cents per pound under paragraph 218, tariff act of 1913, is claimed dutiable at either 1 cent per pound or 20 per cent ad valorem under paragraph 217.

Opinion by WAITE, G. A. On the authority of Graeco-American Currant & Supply Co. *v.* United States (T. D. 29106), affirming Abstract 16814 (T. D. 28429), the currants in question were held properly classified under paragraph 264.

No. 39258.—Protest 762904 of F. B. Vandegrift & Co. (New York).

STAINED GLASS WINDOWS—REGULATIONS.—Stained glass windows imported to be used in houses of worship, classified under paragraph 95, tariff act of 1913, are claimed free of duty under paragraph 655.

Opinion by WAITE, G. A. Upon stipulation of counsel the windows in question were held entitled to free entry under paragraph 655. Perry *v.* United States (6 Ct. Cust. Appls., —; T. D. 35462), followed.

BEFORE BOARD 1, FEBRUARY 16, 1916.

No. 39259.—Protest 796197 of Riggs & Bro. (Philadelphia).

SEXTANTS—NAUTICAL INSTRUMENTS.—Sextants classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

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Opinion by SULLIVAN, G. A. On the authority of the United States *v.* Bliss (6 Ct. Cust. Appls., —; T. D. 35980) the sextants in question were held dutiable as manufactures of metal under paragraph 167.

No. 39260.—Protests 754382, etc., of Morimura Bros. (Seattle and New York).

EASTER BASKETS—TOYS.—Merchandise invoiced as "chip wood baskets, dyed, W/Easter toys attached," "chip wood baskets, dyed W/Easter novelties," and "chip wood baskets, dyed," and classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, is claimed dutiable as baskets at 25 per cent under paragraph 175.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel that the merchandise is similar to that passed upon by the board in G. A. 7790 (T. D. 35796), it was held dutiable as baskets under paragraph 175.

No. 39261.—Protests 717642, etc., of China-America Importing Co. et al. (New York and Philadelphia).

JEWELRY.—The articles in question are claimed dutiable as jewelry or parts of jewelry at 60 per cent ad valorem under paragraph 448, tariff act of 1909, or as manufactures of metal or paste under paragraph 109 or 199.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel certain items were held dutiable under paragraph 448 and others under paragraphs 109 and 199, respectively. United States *v.* Cohn (3 Ct. Cust. Appls., 273; T. D. 32571), United States *v.* Guthman (3 Ct. Cust. Appls., 276; T. D. 32572), Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536), Abstract 35795 (T. D. 34548), Abstract 36105 (T. D. 34652), United States *v.* Altman (6 Ct. Cust. Appls., —; T. D. 35390), and United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed.

No. 39262.—Protests 763126, etc., of Morris Goldberg's Sons (New York).

STEEL SHOE BUCKLES.—Steel shoe buckles or slides, some finished and others unfinished, classified at 50 or 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of base metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the merchandise classified at 50 per cent under paragraph 356 was held dutiable at 20 per cent under paragraph 167. Abstract 38711 followed.

No. 39263.—Protests 766831, etc., of Wm. Fiegel et al. (New York).

PAPER HATS.—Paper hats classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 323, or at 25 per cent under 332.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the hats and caps composed in chief value of tissue or crêpe paper were held dutiable under paragraph 323, and other paper hats and caps under paragraph 332. Abstract 38875 followed.

No. 39264.—Protests 787550, etc., of B. Shackman & Co. (New York).

CANDLES—GROTESQUE RINGS AND SCARFPINS—PAPER FAVORS—TOYS.—Tapers, small colored candles, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385; grotesque rings and scarfpins composed of brass and set with an enormous but crude representation of a diamond, classified as jewelry under paragraph 356, are claimed dutiable as manufactures in chief value of glass or paste at 30 per cent under paragraph 95, at 45 per cent under paragraph 84, or at 20 per cent under paragraph 167; articles colored and shaped to represent the shield of the United States, made of paper pressed into a dishlike form, paper articles in the shape of a scallop shell, miniature golf sticks composed of paper, and miniature paper buckets or champagne coolers in each of which is a paper representation of a bottle of champagne surrounded by pieces of sugar in imitation of ice, classified as toys under

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paragraph 342, are claimed dutiable as manufactures of paper at 25 per cent under paragraph 332 or 324, or at 30 per cent under paragraph 323.

Opinion by SULLIVAN, G. A. The tapers or candles used to ornament birthday cakes were held dutiable under paragraph 385, as claimed; Abstract 39025 followed. The rings and scarfpins, found to be neither jewelry nor articles designed to be worn on apparel or carried on or about or attached to the person, were held dutiable according to the component material of chief value; there being no proof as to this, the highest of the three rates providing for manufactures of these materials was held to apply, viz, 45 per cent under paragraph 84. The paper articles were found not to be toys, but as to these the protests were overruled, the component material of chief value not having been shown, and the rate claimed (25 per cent under paragraph 324) being clearly not applicable.

No. 39265.—Protest 788409 of Geo. Borgfeldt & Co. (Baltimore).

SHAVING SETS—MIRRORS.—Shaving sets reported by the appraiser to be composed of a metal stand with china cup and swinging mirror attached thereto, complete with brush, classified at 30 per cent ad valorem under paragraph 95, tariff act of 1913, are claimed dutiable as articles composed wholly or in chief value of metal under paragraph 167.

Opinion by SULLIVAN, G. A. No evidence was offered as to the component material of chief value. Protest overruled. G. A. 2008 (T. D. 13814) followed; G. A. 7638 (T. D. 34919) cited.

No. 39266.—Protests 776467, etc., of James P. Smith & Co. (New York).

ULTRAMARINE BLUE—WASH BLUE.—Merchandise classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable as wash blue containing ultramarine, at 15 per cent under paragraph 52.

Opinion by BROWN, G. A. On the authority of Abstracts 38629 and 38840 the wash lue was held dutiable under paragraph 52, as claimed.

No. 39267.—Protests 770304, etc., of Hensel, Bruckmann & Lorbacher (New York).

CRUDE GUM—GUM ARABIC.—Merchandise classified as gum arabic at one-half of 1 cent per pound under paragraph 36, tariff act of 1913, is claimed free of duty as crude gum under paragraph 477.

Opinion by BROWN, G. A. Upon stipulation of counsel that the merchandise is identical with that which was the subject of Abstract 38356, it was held entitled to free entry under paragraph 477, as claimed.

No. 39268.—Protest 567901 of Lehn & Fink (New York).

COAL-TAR PREPARATION—SHEEP DIP.—Merchandise classified as a coal-tar preparation at 20 per cent ad valorem under paragraph 15, tariff act of 1909, is claimed free of duty as sheep dip under paragraph 669.

Opinion by BROWN, G. A. Protest overruled on the authority of Merck *v.* United States (6 Ct. Cust. Appls., —; T. D. 35274).

No. 39269.—Protests 760848, etc., of J. Grose & Co. et al. (New York).

FLANNELS.—Merchandise classified as wool cloth or wool dress goods at 35 per cent ad valorem under paragraph 288 or 290, tariff act of 1913, is claimed dutiable as flannels at 25 or 30 per cent under paragraph 289.

Opinion by BROWN, G. A. The merchandise was found to consist of shirting flannel. It was held dutiable under paragraph 289, as claimed. G. A. 7772 (T. D. 35703) followed.

No. 39270.—Protest 761740 of C. A. Auffmordt & Co. (New York).

WOOL DRESS GOODS.—Merchandise classified as cloth in chief value of the hair of the Angora goat, at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed dutiable as cloth in chief value of wool at 30 per cent under paragraph 288.

Opinion by BROWN, G. A. Cloth which was found to be in chief value of wool was held dutiable under paragraph 288, as claimed.

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No. 39271.—Protests 793755, etc., of A. H. Ringk & Co. (New York).

CASHMERE NOILS—WOOL WASTE.—Cashmere noils classified at 15 per cent ad valorem under paragraph 305, tariff act of 1913, are claimed entitled to free entry as wool waste under paragraph 651.

Opinion by BROWN, G. A. On the authority of Abstracts 38198 and 38806 the merchandise in question was held free of duty under paragraph 651, as claimed.

BEFORE BOARD 1, FEBRUARY 18, 1916.

No. 39272.—Protests 756916, etc., of McKesson & Robbins et al. (New York).

DRIED FLOWERS OR LEAVES—AROMATIC SUBSTANCES.—The merchandise in question described by the appraiser as "crude dried rose flowers or leaves" and "dried rose buds and petals," classified as aromatic substances at 20 per cent ad valorem, under paragraph 49, tariff act of 1913, is claimed dutiable as drugs advanced in value or condition at 10 per cent under paragraph 27, or free of duty as crude drugs under paragraph 477.

Opinion by BROWN, G. A. No evidence having been offered as to the use of the articles, except the statement of the appraiser that "they are fit for use in their imported condition as an aromatic substance," the protests were overruled.

(T. D. 36177.)

Exportation and reimportation of leaf tobacco, theatrical effects, etc.

TREASURY DEPARTMENT, *February 21, 1916.*

To collectors and other officers of the customs:

Your attention is called to the provisions of article 999 of the Customs Regulations of 1915 and various decisions of the Board of United States General Appraisers therein cited, under which the shipment of an article to a foreign country with an intention to return the same to the United States is held not to constitute a bona fide exportation.

The department's attention has been invited to the practice of withdrawing leaf tobacco from warehouse for shipment to contiguous foreign territory with an intention to return the same to the United States in order to secure an extension of the warehouse period or in order that duties might be assessed upon a less weight than that found at the time of original importation; and also to cases in which theatrical effects entered under six months' bond are shipped to a contiguous foreign country and subsequently returned to the United States with a view to extending the time during which such effects may be used in the United States without the payment of duty.

You are therefore hereby directed, whenever entry is offered of tobacco, theatrical effects, and similar articles from contiguous foreign territory to make an inquiry before accepting the entry to determine whether or not such articles or effects were sent abroad with an intention to return the same. If it should be found that the exportation was not a bona fide one, entry should not be accepted, the amount of the duties assessed at the port of original importation

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should be ascertained, and the goods released only on the payment of such duties or for immediate exportation.

(104303.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36178.)

Drawback.

Instructing collectors of customs in regard to drawback on articles covered by supplemental sworn statements or schedules.

TREASURY DEPARTMENT, *February 21, 1916.*

To collectors of customs:

A number of cases have come to the attention of the department from which it appears that at some ports it has been the practice to accept supplemental sworn statements and schedules and to allow drawback on the articles covered thereby, notwithstanding that the drawback rate contains no authority for such action. It has also come to the attention of the department that at a few ports drawback is being allowed on articles exported prior to the receipt of authorized supplemental statements and schedules.

In the future, where supplemental statements or schedules are presented in connection with rates of drawback containing no authority for the filing thereof, the date of receipt shall be noted thereon and the same shall be transmitted to the department. The liquidation of entries covering articles embraced in such supplemental statements and schedules shall be suspended pending receipt of departmental authority for the same.

Hereafter, when supplemental sworn statements or schedules are filed showing changes in the quantities or kinds of imported materials appearing in the manufacture of an article, or covering other articles or brands of the same article, or in any way affecting the rate of allowance, drawback shall be allowed only upon exportations on or after the date of receipt of the supplemental statement or schedule in the collector's office.

These instructions shall be effective as to all articles exported on or after 30 days from the date hereof.

(85326.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36179.)

Denatured tea sweepings—Dutiable weight.

Appeal directed from decision of the Board of United States General Appraisers of December 30, 1915, Abstract 39015, involving the dutiable weight of certain denatured tea sweepings.

TREASURY DEPARTMENT, *February 23, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 19th instant relative to a decision of the Board of United States General Appraisers, dated December 30, 1915, Abstract 39015, in which it

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was held by the board that certain denatured tea sweepings, which had been assessed with duty at the rate of 1 cent per pound under paragraph 13 of the tariff act of 1913 on the total weight of the commodity were properly dutiable upon the weight of the commodity less the quantity of lime shown therein by the report of the analyst, and that the lime should be assessed separately as such.

In accordance with your recommendation you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(104572.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36180.)

Cutch.

Acacia catechu cutch (or the "A. C. L." cutch) and the mangrove bark cutches, known as "B. S. L." cutch and "block" cutch, used chiefly for dyeing, are dutiable at the rate of three-eighths of 1 cent per pound under paragraph 30, tariff act of 1913, and other forms of mangrove bark cutch, which are used chiefly for tanning, are free of duty under paragraph 624 of the said act.

TREASURY DEPARTMENT, *February 24, 1916.*

SIR: The department duly received your letter of the 7th instant relative to the classification of so-called cutch.

It appears that acacia catechu cutch (or the "A. C. L." cutch) and certain of the mangrove bark cutches, known as "B. S. L." cutch and "block" cutch, are used chiefly for dyeing, and that there is no evidence that these extracts are medicinal. It is also found that other forms of mangrove bark cutch are used chiefly for tanning.

In view of the foregoing the department concurs in your opinion that acacia catechu cutch (or the "A. C. L." cutch) and the mangrove bark cutches, known as "B. S. L." cutch and "block" cutch, are subject to duty under paragraph 30 of the tariff act of 1913 at the rate of three-eighths of 1 cent per pound as extracts of vegetable origin suitable for dyeing, coloring, or staining, not specially provided for, and that other forms of mangrove bark cutch, which are used chiefly for tanning, are free of duty under the provisions of paragraph 624 of the said act for "tanning material: * * * extracts of * * * barks and woods other than dyewoods such as are commonly used for tanning, not specially provided for."

You will be governed accordingly.

Respectfully, WM. P. MALBURN,
(12237.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36181.)

Drawback on metal alloys.

Drawback on metal alloys manufactured by the Fidelity Metal Co., of Brooklyn, N. Y., with the use of imported lead, antimony, aluminum, type metal, and drosses.—T. D. 29890 of July 1, 1909, revoked.

TREASURY DEPARTMENT, *February 24, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on Babbitt metal, type metal, solder, bronze, and other metal alloys manufactured by the Fidelity Metal Co., of Brooklyn, N. Y., in whole or in part with the use of imported lead, antimony, aluminum, type metal, and drosses.

A manufacturing record shall be kept, which will show, in the case of each lot of metal alloy manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of each kind of imported metal and the quantity of each kind of other metal used, the quantity and kind of metal alloy produced, the loss by volatilization, and the quantity of dross resulting. An abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantities of imported metals appearing in the exported metal alloys, with an addition to compensate for the loss by volatilization, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated February 2, 1916, is transmitted herewith for filing in your office.

T. D. 29890 of July 1, 1909, is hereby revoked.

Respectfully, WM. P. MALBURN,
(65523.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36182.)

Drawback on kidney pills.

T. D. 36006 of December 20, 1915, extended to cover kidney pills manufactured by the Foster-Milburn Co., of Buffalo, N. Y., in part with the use of imported buchu leaves.

TREASURY DEPARTMENT, *February 24, 1916.*

SIR: The department's regulations of December 20, 1915 (T. D. 36006), providing for drawback on kidney pills manufactured by the Foster-Milburn Co., of Buffalo, N. Y., with the use of refined sugar

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produced from imported raw sugar, are hereby extended to provide for drawback on such kidney pills in the manufacture of which imported buchu leaves are used.

A manufacturing record shall be kept, which will show, in the case of each lot of buchu leaves ground, the lot number and date of grinding thereof, the quantity and identity of the imported buchu leaves used, the quantity of ground buchu leaves obtained, and the quantity of waste incurred. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of ground buchu leaves appearing in the exported kidney pills, as shown by the sworn statement of the manufacturers, dated January 18, 1916, transmitted herewith, with an addition to compensate for loss in grinding, as shown in the abstract from the manufacturing record.

Respectfully, WM. P. MALBURN,
(101560-4.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36183.)

Common carrier.

Discontinuance of the bonded route of the Oregon & Washington Railroad Co. for the transportation of dutiable merchandise.

TREASURY DEPARTMENT, *February 24, 1916.*

SIR: The department has received your letter of the 14th instant, with which was inclosed an application of the president of the Oregon & Washington Railroad Co. for the discontinuance of the bonded route of said company for the transportation of dutiable merchandise covered by a bond approved May 16, 1910.

It appears from your letter and accompanying communication that the property of said company has been conveyed to the Oregon-Washington Railroad & Navigation Co., which is now operating as a bonded common carrier. As you state there are no outstanding charges against the bond of the Oregon & Washington Railroad Co., the discontinuance of the route of said company is authorized. The fact and date of discontinuance should be noted on the bond of the company on file in your office, which should be retained without cancellation to meet any liability which may have accrued thereunder.

Respectfully, WM. P. MALBURN,
(74551.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Seattle, Wash.*

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(T. D. 36184.)

Mounted birds and animals.

Mounted birds not suitable for use as millinery ornaments dutiable at the rate of 40 per cent ad valorem under paragraph 347, tariff act of 1913, and mounted animals in chief value of fur dutiable at the rate of 40 per cent ad valorem under paragraph 348 of the said act.

TREASURY DEPARTMENT, *February 23, 1916.*

SIR: The department is in receipt of your letter of the 31st ultimo, further in regard to the classification of taxidermists' work, such as mounted birds and a mounted bear.

It appears that it has been your practice to assess duty on such mounted birds and mounted animals at the rate of 15 per cent ad valorem as nonenumerated manufactured articles under paragraph 385 of the tariff act of 1913, but you now express the opinion that the mounted birds are dutiable at 40 per cent ad valorem under paragraph 347, and that mounted animals in chief value of fur are dutiable at the rate of 40 per cent ad valorem under paragraph 348.

The department concurs in the view expressed, and in future cases you will assess duty on mounted birds not suitable for use as millinery ornaments at the rate of 40 per cent ad valorem under paragraph 347 of the tariff act of 1913 as feathers on the skin, advanced or manufactured, not suitable for use as millinery ornaments, following T. D. 35437, and on mounted animals in chief value of fur at the rate of 40 per cent ad valorem under paragraph 348 of the said act as articles manufactured from fur not specially provided for.

However, the prohibition of paragraph 347 of the tariff act against the importation of the feathers, quills, heads, wings, tails, skins, or parts of skins, etc., of wild birds not for scientific or educational purposes should be observed.

Respectfully, WM. P. MALBURN,
(96009.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36185.)

Drawback on braids, fabrics, etc.

Drawback on braids, fabrics, garments, neckties, scarfs, sweaters, and similar woven or knitted articles manufactured by William Salmon, of Brooklyn, N. Y., in whole or in part with the use of imported artificial silk yarns.—T. D. 31930 of October 19, 1911, revoked.

TREASURY DEPARTMENT, *February 24, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(articles 855 to 881 of the Customs Regulations of 1915) on braids, fabrics, garments, neckties, scarfs, sweaters, and similar woven or knitted articles manufactured by William Salmon, of Brooklyn, N. Y., in whole or in part with the use of imported artificial silk yarns.

A record shall be kept covering each lot of imported artificial silk yarn to be used in the manufacture of articles for exportation with benefit of drawback, bleached or dyed, which will show the lot number and date of bleaching or dyeing thereof, the quantity and identity of imported yarn used, and the quantity of bleached or dyed yarn obtained. A record shall also be kept covering each lot of articles manufactured for exportation with benefit of drawback, which will show the lot number and date of manufacture thereof, the number and kind of articles manufactured, and the quantity and identity of the imported artificial silk yarn and the quantity of other materials appearing therein. Sworn abstracts from the above manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of bleached or dyed imported artificial silk yarn appearing in the exported articles, as shown by the abstract from the manufacturing record, such allowance to be increased or reduced, in proportion to the loss or gain in the weight of the yarn during the process of bleaching or dyeing, as shown by the abstract from the bleaching or dyeing record.

The sworn statement of the manufacturer, dated February 9, 1916, is transmitted herewith for filing in your office.

T. D. 31930 of October 19, 1911, is hereby revoked.

Respectfully, WM. P. MALBURN,
(65456) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36186.)

Card-clothing grinding machines—Machine tools.

Appeal from decision of the Board of United States General Appraisers of December 23, 1915, Abstract 38981, involving the classification of certain card-clothing grinding attachments.

TREASURY DEPARTMENT, *February 25, 1916.*

SIR: I have the honor to acknowledge the receipt of your letter of the 19th instant, inviting attention to the decision of the Board of United States General Appraisers of December 23, 1915, Abstract 38981, wherein certain card-clothing grinding attachments, which had been assessed with duty at the rate of 20 per cent ad valorem

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as manufactures of metal under paragraph 167 of the tariff act of 1913 were held by the board to be dutiable at the rate of 15 per cent ad valorem as machine tools under paragraph 165 of the said act.

Your action in filing, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909, is hereby approved.

Respectfully, ANDREW J. PETERS,
(72100.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36187.)

Cigars made in bonded manufacturing warehouses.

T. D. 35868 of November 3, 1915, requiring caution notices on cigar boxes, amended to provide for numbers of the manufacturing warehouses instead of names of the manufacturers.

TREASURY DEPARTMENT, *February 25, 1916.*

SIR: The department has given careful consideration to your letter of the 4th ultimo, and also to representations made by various distributors and jobbers of cigars, relative to the requirement of T. D. 35868 that the caution label placed upon cigars manufactured in bonded manufacturing warehouses of class 6 contain the name of the manufacturer of the cigars, and has decided such bonded manufacturing warehouses shall be designated by numbers and these numbers be shown on the caution label instead of the names of the manufacturers.

The inscription upon the label shall therefore be, "Made in No. ——, customs bonded manufacturing warehouse, class 6," and T. D. 35868 is hereby amended accordingly.

A separate series of numbers will be used for each district in which manufacturing warehouses of class 6 for the manufacture of cigars have been established. In case of the discontinuance of a manufacturing warehouse, the number assigned thereto will not be used to designate any other warehouse which may be later established in that district.

Respectfully, ANDREW J. PETERS,
(100576.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Tampa, Fla.*

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(T. D. 36188.)

Shipments of hides arriving without disinfection certificates.

Collectors instructed as to the procedure when hides requiring disinfection certificates arrive without such certificates.

TREASURY DEPARTMENT, *February 25, 1916.*

To collectors of customs:

In future when a shipment of hides which requires, under the regulations in T. D. 30583 (Circular 23) of May 2, 1910, a certificate of disinfection, arrives without such certificate, the importer may make application to the department for permission to disinfect the hides at his tannery. If the importer has the proper facilities, the Department of Agriculture will permit such disinfection under the supervision of an inspector of the Bureau of Animal Industry, and the collector of customs, upon being so advised, shall permit the hides to go forward from the port of entry to the tannery under customs seals, notification of such action to be sent to the inspector of the Bureau of Animal Industry designated to supervise the disinfection.

(74465.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36189.)

Port of entry.

San Pedro, Cal., abolished as a port of entry in customs collection district No. 27.

TREASURY DEPARTMENT, *February 26, 1916.*

To collectors of customs and others concerned:

The appended Executive order, dated February 21, 1916, abolishing San Pedro, Cal., as a port of entry in customs collection district No. 27, of which Los Angeles is the headquarters port, is published for the information of all persons concerned.

By direction of the Secretary.

(90740-27.) ANDREW J. PETERS, *Assistant Secretary.*

EXECUTIVE ORDER.

Pursuant to the provisions of the act of Congress approved August 1, 1914, making appropriations for the sundry civil expenses of the Government for the fiscal year ended June 30, 1915, the port of entry at San Pedro, California, in customs collection district No. 27, of which Los Angeles is headquarters port, is hereby abolished, for the reason that San Pedro has heretofore been merged with and included within the corporate limits of the city of Los Angeles.

This order will be effective on and after March 1, 1916.

WOODROW WILSON.

THE WHITE HOUSE, *February 21, 1916.*

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(T. D. 36190—G. A. 7862.)

Imported merchandise.

RAILWAY MAIL CAR.

A mail car used to transport international mail upon an international railway for somewhat more than a year, and then, for reasons of economy of operation, temporarily used for the same purpose between two points within the United States and on the same line of railway, is not "merchandise introduced into the country for sale and consumption. or for the general purposes of commerce." It is therefore not imported merchandise in the sense that it is subject to duty.

WAITE, *General Appraiser*, dissenting, holds: A railway mail car formerly used on an international "run" between a point in Canada and a point in the United States, but for a year used wholly between two points in the United States, is subject to duty as imported merchandise.

United States General Appraisers, New York, February 23, 1916.

In the matter of protest 789185 of the Duluth, Winnipeg & Pacific Railway Co. against the assessment of duty by the collector of customs at the port of Duluth.

[Reversed.]

Washburn, Bailey & Mitchell (*A. McC. Washburn* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States

Before Board 3, (WAITE, HAY, and BROWN, General Appraisers; WAITE, G. A., dissenting).

HAY, *General Appraiser:* The Duluth, Winnipeg & Pacific Railway Co., a subsidiary of the Canadian Northern Railway system, operating an international railway, with a line running from Winnipeg, in Canada, via Fort Frances at the international boundary, to Duluth, Minn., in the year 1913 installed on one of its trains running between Duluth and Winnipeg a mail car used to transport mail between the cities named and along the lines of said route. The car was so used, as an international mail car upon an international railway operating international trains, for somewhat more than a year—the exact time is not definitely disclosed by the record. Toward the end of the year 1914, on account of the falling off of business, the car was used for a number of months, perhaps a year, to carry mail from Duluth to Cusson, on the same line of railway but south of the international boundary and in the State of Minnesota, where the mail was transferred to another car, thereby, as the record shows, effecting a saving in operation. The testimony shows that this is but a temporary use of the car and that it was the purpose of the railway company to put it into international service as soon as the condition of business would warrant, and, at the time of the hearing, it was testified that it would again be placed in international service within a day or two of that time. When the car ceased to cross the border the collector levied duty upon the same, first classifying the car in an advisory way as manufactures of wood under paragraph 176, tariff act of 1913, and

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afterward classifying it as a manufacture of metal under paragraph 167, under which classification the entry was liquidated and duty assessed and collected. Three claims are made in the protest. First, that if dutiable at all the car should be classified as manufactures of wood under paragraph 176; second, it should be classified as a non-enumerated manufactured article under paragraph 385; and, third, that the car was not dutiable at all in that it was not an importation within the meaning of the tariff laws. No testimony relative to the chief value of the car was offered at the hearing by the collector. While the testimony of the importers tends, we think, quite strongly to show that the chief value of the car is wood, it is not as accurate in detail as testimony offered for this purpose should be, and, in the view we take of the case it is not necessary to determine the chief value; hence, we do not pass upon it.

We think the important question in the case is, "Is this car imported merchandise within the meaning of the tariff law?" If it is not, it is, of course, not dutiable. The law of 1913 provides that duty shall be paid "upon all articles when imported from any foreign country into the United States." In the *Conqueror* (166 U. S., 110), the learned judge in discussing this question says that in all of the principal tariff acts from 1789 down to that time it is shown that duties are laid either on "articles," as was the case in the act then under consideration, or upon "goods, wares, and merchandise," and that these words have a similar meaning. In the case of the *Gertrude* (2 Ware, 181; 10 Fed. Cas., 265, No. 5370) it was said that the tariff laws refer to articles having the quality of merchandise in the ordinary and most popular sense of the word. These words, it is further said, "refer to goods intended to be introduced into the country for sale and consumption, or for the general purposes of commerce." A similar rule was laid down by Mr. Justice Story in United States *v.* Chain Cable (2 Sumn., 362; 25 Fed. Cas., 391, No. 14776). The doctrine of this case was approved by the Supreme Court in the *Conqueror, supra.* In the latter case it was held that a yacht brought by Mr. Vanderbilt into this country was not imported merchandise in the sense that it is subject to duty.

The mail car in question in the case at bar is not merchandise in the ordinary use of that term, nor is it imported merchandise within the reasonable rule laid down by the courts. It is not brought here for sale nor does it ever mingle, in the ordinary sense, in the commerce of this country, or become a part of the same. It is a vehicle in which international mail is transported, and the fact that it was used for a short time wholly within the United States does not, in our judgment, change its status. The views here expressed seem to coincide with the views of the Treasury Department as stated in an able opinion by Mr. Windom, while Secretary of the Treasury (T. D. 9549).

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The protest is sustained and the collector directed to reliquidate the entry in accordance with the views herein expressed.

DISSENTING OPINION.

WAITE, *General Appraiser:* I am unable to agree with the reasoning or the conclusion reached by my colleagues in the majority opinion in this case. As stated therein, the property in question consists of a combination mail and baggage car, constructed with special regard for the requirements of the mail service in the United States, and started on its international run between Winnipeg, Canada, and Duluth, Minn. After having been run for a short time over the route between the cities mentioned, it was, some time in 1913, placed on a run between Duluth and Fort Frances, just at the border in Canada. Some time about November, 1914, its run was shortened, so that the northern terminal was Cusson, a place in the United States some 40 or 50 miles from the Canadian line. The run was then between Cusson and Duluth until the hearing in this case took place, the time being about a year. Special attention is called to the fact that the car was regularly entered at the port of Duluth some time in July, 1915. It was appraised at the entered value, the collector liquidated, and the protest in this case is the result.

The majority opinion is on the theory that the car in question is not such an article as could be imported under the tariff laws of the United States existing at the time of its importation. The opinion is based upon the decision of the Supreme Court in the case of the *Conqueror* (166 U. S., 110). I do not think that decision is authority for the finding of the board in this case. It is true the judge in deciding the case of the *Conqueror* has something to say about the meaning of the terms used in the statute, to wit, "articles" and "goods, wares, and merchandise," but that part of the decision which deals with these terms can, in my judgment, be regarded simply as dictum. It is in no way essential to the decision of the case. Besides which, it must be borne in mind that there is a radical difference between a seagoing yacht and a railroad car, which, as a matter of fact, is brought into the country and becomes mingled with and used in the commerce of the country; in other words, it is a commercial commodity, bought and sold within the territory and body of the land.

The case of the *Conqueror* arose over a yacht bought by a citizen of the United States in May, 1891. In July of that year she was sent across the ocean, arriving at the port of New York about July 6, 1891, where she was duly entered as a vessel with the collector of the port, and paid the light money levied upon her by the collector as a vessel,

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pursuant to section 4225, Revised Statutes. After having received her certificate and proof of her ownership, which entitled her to protection as an American vessel, and after having cruised for some time about the coast, she was seized by the collector and forcible possession was taken of her. There is nothing to show she was ever entered by the owner or treated in any way as an importation. Mr. Justice Brown, in deciding the case, used the following language:

> While a vessel is an article of personal property, and may be termed "goods, wares, and merchandise," as distinguished from real estate, it is not within either class as the words are ordinarily used. In all this class of cases the meaning of the words, as used in the particular statute, must be gathered from the context and from the evident purpose of the act.

And, further:

> Vessels certainly have not been treated as dutiable articles, but rather as the vehicles of such articles, and, though foreign built and foreign owned, are never charged with duties when entering our ports.

And, further:

> If she be dutiable at all, it must then be because she was bought by an American citizen. But why should this make her dutiable? She is not imported or taken into the country in the ordinary sense in which that term is used with reference to other articles, does not become commingled with the general mass of property, and is employed precisely as she might be legally employed by her foreign owners or by an American citizen leasing her from such owner. Other articles are dutiable, not because they have been purchased, but because they are actually imported and become the subject of sale and commerce within the country. But if a yacht be dutiable when purchased, and only when purchased by an American citizen, we apply a test of dutiability that we apply to no other article, namely, the test of ownership.

And he further says:

> Considering the hundreds of foreign vessels which enter the ports of the United States every day, it is incredible that, if Congress had intended to include them in the tariff acts, it would not have made mention of them in terms more definite than that of "manufactures."

These excerpts from the opinion in the case of the *Conqueror* are useful only in showing the bent or trend of the mind of the court. In our judgment the gist of the whole decision is found in the following language on page 118 of the report:

> But the decisive objection to the taxability of vessels as imports is found in the fact that, from the foundation of the Government, vessels have been treated as *sui generis*, and subject to an entirely different set of laws and regulations from those applied to imported articles.

After reciting the history of legislation with reference to vessels, the justice says:

> This distinction between "goods, wares, and merchandise" and "ships or vessels" has been maintained ever since, although the amount of such duties has been repeatedly and sometimes radically changed.

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And from page 121 we quote the following:

We think that the liability of ships and vessels to tonnage dues and to light money, except where a certain class of vessels is specially exempted, shows that it was not the intention of Congress to treat them as dutiable articles.

No such intent can be gathered from the present law with reference to the importation into the United States of railroad cars. We do not understand it is claimed that duty could not be assessed upon a railroad car if it were, for instance, purchased by a railroad company in the United States for use in the United States and brought in and mingled with the cars in the United States for domestic transportation. In fact, this is conceded by counsel for the importers in this case. After stating what he understands to be the rule laid down in the case of the *Conqueror*, he says, on page 2 of his brief:

But no one would contend that a ship or a railway car or any other vehicle could, because of this rule, be actually imported into this country duty free.

Without assenting to the proposition that a vessel, without being specifically provided for, could be imported into the country and pay duty under the tariff act, I entirely agree with this statement with reference to railroad cars, or other similar vehicles. This admission of importers' counsel, that the car might be brought in under such circumstances as would make it dutiable, as for instance, if for sale or for continuous use in the United States, absolutely nullifies the principal ground upon which the decision of the majority of the board rests; that is, that it is not such an article as is provided for by the statute, or can be made dutiable thereunder.

It will be borne in mind that this car was continuously used in the United States for about a year without having been returned to Canada. The policy of the tariff law is to provide especially for such articles as are brought into the country for temporary purposes by making provision for a bond for their exportation, and the promulgation of certain regulations governing them. We find nothing of the kind with reference to railroad cars. The spirit and intent of the law, however, seem to be set forth in the provisions on the statute books for the importation of goods in cars. Revised Statutes, sec. 3102 (United States Compiled Statutes, 1914, sec. 5814), provides for the sealing of cars at the boundary. There are also provisions that such cars may proceed to their destination under seal, and there be delivered to the Government officers; and it is specially provided that if they are diverted, or the seal broken, or the goods taken to any other destination, the car and the contents may be seized. Provision is also made for the transportation of goods through the country and over foreign territory. See Revised Statutes, sec. 3006 (United States Compiled Statutes, 1914, sec. 5691). The question of the importation of railroad cars has been dealt with from time to time by the Treasury Department in regu-

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lations, but each case seems to have been decided upon the existing exigencies. For instance, in the case of a locomotive, the Secretary of the Treasury, in T. D. 12859, used the following language:

> Every foreign locomotive on a continuous route crossing the boundary into the United States shall be allowed to bring its train directly to and from the first customs port on its route, or to and from the termination, in the United States, of what is technically known as the "run" of the locomotive, if it be beyond the limits of such port, but no foreign-made locomotive shall be employed for the continuance of the inward trip unless such locomotive shall have been duly entered for duty in the United States.

I am not here criticising or condemning in any way that rule of comity, defined to be "the friendly and mutual courtesy under which various beneficial acts and recognitions, not obligatory by strict law or by treaty, take place between nations." I am entirely in accord with the rule as I understand it to be exercised and applied by the officials of the Government; but certainly it could not be intended to overlook an abuse of the privilege under that rule, whereby it was unduly extended by the beneficiary. This car was brought into the United States under the above rule, and had it come and gone as originally started, there probably would have been no criticism. If the door, however, is opened to the introduction of railway cars into the United States, to mingle with the commerce thereof and be used in this country in the same way as property manufactured here, with nothing to insure their exportation except a promise or statement of an intention to return them to a foreign country, it may give rise to grave abuse. This can be avoided, however, by strict compliance with the reasonable rule enunciated in T. D. 12859, *supra*. It would seem as though the majority opinion is based really upon the promise of the witness that this car should be returned to Canada in the near future. In my opinion such promise can not be received as the basis of a decision. The correct idea is clearly conveyed by Judge Hay at the hearing, where he says, "it makes no difference that it is going to leave to-morrow night." And in response to a statement of counsel for the importers, who said, "to-morrow it goes back into Canada," Judge Hay said: "We have not much to do with to-morrow, sir."

In my opinion cars used in international traffic are exempt only so long as they are proceeding in the regular course of business on their regularly prescribed "run" to their stated destination, from which they should return in the same regular way, barring unforeseen accidents and circumstances. This is all, it seems to me, that the rule of comity can demand, and it is as far as those who are interpreting the tariff laws of the United States are safe in extending the privilege.

I am of the opinion also in this case that the car having been regularly entered, it must be treated as entered merchandise. This

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I understand to be the rule laid down in the case of the *International* (83 Fed., 840, affirmed in 89 Fed., 484).

I think it can not be controverted but that if this car were brought in for sale it would be dutiable. If that is so, its status is the same as that of an express wagon, either an automobile or one drawn by horses, used to convey goods from a point in Canada to a point in the United States just across the line. Under the rule of comity the practice may go on for years in the absence of any specific law to the contrary, notwithstanding there is no law permitting it; but I think no one would assume that if the vehicle were retained in the United States and placed on a route between two points in the United States and remained there for months or years it would be exempt from duty merely on the promise to return it to its original run, or the promise to take it out of the United States at some future time. So in this case the car is primarily dutiable. In fact, no article is allowed to come into the United States free of duty unless it be specifically exempt in the law. The claim of exemption from duty in this case rests upon conformity to a practice which has been sanctioned by the rule of friendly relations. When that practice is departed from, as in this case, the property becomes dutiable, as it was in the beginning. The rule by which it is exempt, which rests solely and purely upon the indulgence extended by the authorities of the United States, ceases to apply.

Another question is raised in the case with reference to the component material of chief value. The car was assessed as though the chief value were metal. Reference is made to the majority opinion for a statement of the claims made in this case. Some testimony was given by one witness on behalf of the importer tending to show that the chief value was wood. The testimony, however, is inexact and unsatisfactory. The value of considerable part of the metal, that which was used in the construction of the car above the trucks—which, according to the testimony, was considerable—seems not to have been taken into account. No value was given to it by the witness. There is nothing to indicate how much the painting or other work cost, exclusive of the metal and wood. I am therefore of the opinion that the presumption of correctness attending the finding of the collector with reference to this point has not been overcome. I think the protest should be overruled in all respects.

(T. D. 36191—G. A. 7863.)

Photograph mounts or holders.

Photograph mounts or holders composed wholly or in chief value of imitation parchment paper or of paper with the surface decorated or covered with a design or pattern are dutiable under the specific provision for articles so composed in

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paragraph 324, tariff act of 1913, rather than under the provision in paragraph 332 of said act for manufactures of paper. Similar articles composed wholly of cardboard are properly classifiable under said paragraph 332 as manufactures of paper, rather than under paragraph 324 as manufactures of surface-decorated paper.

United States General Appraisers, New York, February 23, 1916.

In the matter of protests 764091, etc., of George Hirschfeld *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Reversed in part; affirmed in part.]

Brooks & Brooks (*Frederick W. Brooks* of counsel) for the importers.

Ert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise in question consists of holders or mounts for photographs. It is composed of uncoated paper the surface of which has been decorated or covered with a design and embossed, or of coardboard the surface of which has been similarly processed, or of a combination of such paper and cardboard.

Duty was levied upon all of said articles at the rate of 35 per cent ad valorem under the following provision in paragraph 324 of the act of 1913:

* * * Uncoated papers, gummed, or with the surface or surfaces wholly or partly decorated or covered with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise except by lithographic process, * * * bags, envelopes, and all other articles composed wholly or in chief value of any of the foregoing papers, not specially provided for in this section, * * *.

The importers claim that said articles are properly dutiable at the rate of 25 per cent ad valorem under the provision in paragraph 328 of said act for "cardboard and bristol board," or at the same rate under the general provision in paragraph 332 for "manufactures of paper or of which paper is the component material of chief value, not specially provided for in this section."

Inasmuch as an examination of all of the samples which have been offered in evidence herein shows them to be completely finished photograph mounts or holders, there can be no merit whatever in the contention of the importers that they are properly classifiable under paragraph 328 as cardboard or bristol board. They have ceased to be materials and must now be treated as manufactured articles.

The only claim in the protests, therefore, which is worthy of consideration here is that alleged under paragraph 332. This contention is apparently based upon the theory that inasmuch as both the paper and cardboard of which these articles are composed were in the first analysis in a plain and undecorated state, the finished holders or

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mounts must necessarily be treated and classified accordingly as manufactures of paper.

The only testimony offered on behalf of the importers is that of George Hirschfeld, one of the protestants herein. This witness testified that he was familiar with the various processes employed in the manufacture of said articles, having seen similar merchandise made in the factory in Germany; that in the production thereof large sheets of plain paper and plain cardboard are used; that these sheets are first cut to the different sizes required for making the various holders or mounts; that they are then surfaced with a decorative design or pattern and embossed, after which the completed holder or mount is made by pasting together the different decorated and embossed sheets of paper and cardboard and folding the same into the desired shapes; that in each instance the surfacing and embossing processes are applied to the different components before they are finally assembled to be made up into articles.

The testimony limits the claims in the various protests to the particular merchandise described on the invoice by the items PL 47 and PL 118 (a sample of each of which forms part of collective Exhibit 1); items P 24, P 11, P 9, P 34, and KAV 103 (a sample of each of which forms part of collective Exhibit 2); and items P 5, P 18, P 28, P 31, KAV 33, KAV 45, KAV 97, KAV 112, PL 101, and PL 120 (a sample of each of which forms part of collective Exhibit 3). The letters "P," "PL," and "KAV," appearing on said samples are intended to refer to the steamships *Patricia*, *President Lincoln*, and *Kaiserin Augusta Victoria*, respectively.

Furthermore, the testimony discloses that the articles represented by the samples which comprise collective Exhibit 1 are composed partly of cardboard and partly of paper; those represented by the samples which comprise collective Exhibit 2 are composed of cardboard, and those represented by the samples which comprise collective Exhibit 3 are composed of paper. An examination of such samples, however, shows that of the five representative holders which go to make up collective Exhibit 2, only three (KAV 103, P 9, and P 34) are composed entirely of cardboard; that of the remaining two, one (P 24) is in the form of a folder composed of embossed cardboard with a thin leaf of imitation parchment paper, and the other (P 11) is also in the form of a folder with two inserts, one of thick cardboard and the other a thin sheet of imitation parchment paper, with the cover of surface decorated paper.

In numerous decisions this board and the courts have held that articles made from cardboard are properly classifiable as manufactures of paper, there being no specific provision for manufactures of cardboard. Hence, we sustain the claim in the protests, alleged under paragraph 332, in so far as it affects the merchandise repre-

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sented by the items KAV 103, P 9, and P 34, the samples of which show that they are composed entirely of cardboard.

As to the articles composed partly of cardboard and partly of imitation parchment paper, or partly of cardboard and partly of surface decorated paper, there is absolutely no proof showing that cardboard is the component material of chief value. Under the circumstances, such articles are properly classifiable under paragraph 324.

Moreover, we do not take seriously the contention of the importers that these articles are manufactures of paper because the component paper materials were plain, and not surface decorated, in the first instance, and that it was not until after it was cut to size that the paper was embossed and surfaced. In our judgment, it is wholly immaterial when the surfacing and embossing takes place, so long as it occurs while the paper is still in the form and condition of material and before it enters into and becomes an integral part of the individual photographic mount.

Surely it will not be denied that the application to plain paper of surfacing and embossing processes not only operates to change the condition and value of the paper, but that it also serves to alter the commercial and tariff designations thereof. Manifestly, after its surface has been decorated or covered with a design or pattern and embossed it no longer can be classified as plain paper, and were it imported with its surface decorated or embossed it would unquestionably be properly classifiable under paragraph 324 and not as plain paper under paragraph 332.

Furthermore, the particular provision under which duty was levied on said merchandise covers "articles composed wholly or in chief value of any of the foregoing papers," and we find that "uncoated papers * * * with the surface or surfaces wholly or partly decorated or covered with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise except by lithographic process, * * * and imitation parchment papers," are among the various classes of papers specifically mentioned and included in the "foregoing papers" in the pertinent provision in paragraph 324. Inasmuch as the testimony conclusively shows that the papers which entered into the manufacture of these articles were of the classes described in paragraph 324, and there being no evidence whatever to show that such papers did not also constitute the component material of chief value in said articles, it follows as matter of course that articles so composed are properly and specifically provided for under the provision in said paragraph for "articles composed wholly or in chief value of any of the foregoing papers."

In the case of United States *v.* Meadows (2 Ct. Cust. Appls., 143; T. D. 31665), wherein was raised the question as to what constituted

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the component material of chief value in certain slippers composed of cotton and leather, Judge Barber, speaking for the United States Court of Customs Appeals, said:

> Ordinarily it would seem that in the manufacture of articles composed of two or more components, one of which would be of chief value, the amount of treatment received by each before being put together and the precise order as to time in uniting them to make the finished article would be determined in view of the results obtained and that course would be adopted that gave the best results. * * * In each case, however, inquiry will show at what stage the component parts have been made ready to be united to form the complete whole, and at that stage its condition will be "its condition as found in the article."

Applying this rule to the present merchandise, we find from an examination of the samples in evidence herein that they are made up in some cases almost entirely of paper which has a decorated and embossed surface, in some cases partly of that class of paper and of cardboard, and in some instances of surface-decorated paper and imitation parchment paper; and from the testimony we find that the condition of the paper as found in the article is precisely the condition thereof when it was prepared and made ready to be united to form the complete holder; and, as before stated, there is no proof whatever to show that such paper is not the component of chief value in the articles.

The protests are sustained in so far as they cover the merchandise represented by these items in collective Exhibit 2, viz, KAV 103, P 9, and P 34, which are shown to be composed entirely of cardboard. In all other respects the protests are overruled.

(T. D. 36192—G. A. 7864.)

Sodium sulphate, powdered.

1. CALCINED SODIUM SULPHATE—CHEMICAL COMPOUND.

Calcined sodium sulphate in the powdered form is not included in the provision for sulphate of soda crystallized, or Glauber salts, in paragraph 67, act of 1913, and was properly classified as a chemical compound or mixture under paragraph 5.

2. COMMERCIAL DESIGNATION.

The testimony of commercial witnesses in this case does not make out a designation of Glauber salts which would include this article.

United States General Appraisers, New York, February 23, 1916.

In the matter of protests 740425, etc., of C. Bischoff & Co. *et al.* against the assessment of duty by the collector of customs at the port of Boston.

[Affirmed.]

Comstock & Washburn (*Henry J. Rode* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin* and *Charles D. Lawrence*, special attorneys), for the United States.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers).

BROWN, *General Appraiser:* The merchandise here in controversy was classified under paragraph 5, tariff act of 1913, at 15 per cent

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as a chemical compound, mixture, or salt. It is claimed to be dutiable under the provision in paragraph 67 reading—

Sulphate of soda crystallized, or Glauber salts, $1 per ton.

Thorpe's Dictionary of Applied Chemistry, 1913 (vol. V, p. 21), says that—

Sodium sulphate, technically called "sulphate," or "salt cake," was first obtained by its discoverer, Glauber, as described by him in 1658, exactly in the same way as it is prepared now, by the decomposition of common salt by sulphuric acid. The crystallized salt, containing 10 molecules of water of hydration, is still called "Glauber's salts." * * *

Again, on page 27—

Glauber's salts is crystallized sodium sulphate. $Na_2SO_4 10H_2O$. It is manufactuerd for a few purposes, principally for medicinal use and for freezing mixtures.

The testimony indicates that the merchandise is sodium sulphate in a powdered form, calcined, and therefore free from the water of composition. The evidence further indicates that it is used in dyeing and as a standardizing agent for reducing colors, and sometimes in glass making.

It would appear that Congress in enacting the provision in paragraph 67 was intending to cover only the sodium sulphate in the crystallized form, and added the words "Glauber salts" simply by way of further description.

Evidence of commercial designation was introduced, but it does not make out a universal custom of handling this article, for, while several witnesses for the importers testified that the substance here in dispute was known in the trade and commerce of this country as Glauber salts, on the other hand, several witnesses for the Government testified that in the trade the term "Glauber salts" only included the crystalline form, which conforms to the chemical nomenclature above quoted.

Therefore, no commercial designation being established differing from the common meaning, we hold on this record that the merchandise here in controversy was properly classified under paragraph 5, and affirm the collector's action.

Protests overruled.

(T. D. 36193—G. A. 7865.)

Flax card cloth—Double fabric.

A double cloth or fabric composed in chief value of flax, which appears to be plain woven on the surface but in which the warp and weft threads do not interlace alternately with each other throughout the fabric, is not a plain woven fabric

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within the meaning of paragraph 283, tariff act of 1913, but properly falls for duty under the provision for manufactures of flax in paragraph 284.

United States General Appraisers, New York, February 25, 1916.

In the matter of protests 773769, etc., of Stone & Downer against the assessment of duty by the collector of customs at the port of Boston.

[Affirmed.]

Searle & Waterhouse (*W. E. Waterhouse* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, *Martin T. Baldwin*, and *Frank P. Wilson*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

COOPER, *General Appraiser:* Certain card cloth classified as "manufactures of flax" and returned for duty at the rate of 35 per cent ad valorem under paragraph 284, act of 1913, is claimed to be a plain woven fabric composed in chief value of flax and properly dutiable at the rate of 30 per cent ad valorem under paragraph 283.

The only question before us for decision is whether or not this fabric is plain woven. The merchandise is identical with that passed upon in the case of Howard Bros. Manufacturing Co., Abstract 37354, and the record in that case was incorporated and made a part of the record in this case. In that case two well-qualified witnesses testified that the fabric was plain woven and two equally expert witnesses testified that it was not plain woven, and the board held that the importer had not overcome by a preponderance of evidence the presumption of correctness of the collector's classification. In the present case the importer produced one of the witnesses who testified in the former case and two other witnesses, all of whom are experts engaged in designing fabrics and textile weaving machinery.

It appears from the record and we find as facts that the cloth in question is used in making card clothing; that the warp threads are made of flax and the weft of wool and that flax is the component of chief value; that the fabric is woven double for the purpose of increasing the weight and strength; that there are two sets of weft threads and five sets of warp threads; that the weft threads on each face of the fabric pass alternately over one warp and under one warp thread; and that the warp threads pass over one weft thread in the face or upper layer of the double fabric, then pass down to the other side or back of the fabric, going under one weft thread in the lower layer of the fabric before returning to the upper surface, thus binding the two fabrics together, but, inasmuch as the fabric is double and there are two sets of weft threads, before the warp threads return to the upper surface they pass under four weft threads. Thus the warp threads throughout the whole fabric go over one and under four weft threads, but the cloth is so made that each face or surface appears to be plain woven, both the warp and the weft threads appearing to go

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over one and under one thread, there being no skip visible on either surface. The importers' witnesses who testified in the trial of the particular protests now before us for decision said that the fabric is designated by weavers in the textile industry as a "plain double weave."

But is a plain double weave actually a plain weave? It has been held that certain jute canvas having a double warp, but which was not twilled or figured in any manner in the process of weaving, was a plain woven fabric (*In re* Lamb, G. A. 4097, T. D. 19098, affirmed by the court in the case of United States *v.* Lamb, 99 Fed., 262) and that the term "plain woven" means plain as distinguished from twilled or figured effects produced in the process of weaving. *In re* White, G. A. 5035 (T. D. 23386); *In re* Downing & Co., G. A. 6063 (T. D. 26445); *In re* White, G. A. 7222 (T. D. 31588), affirmed by the court in the case of White *v.* United States (2 Ct. Cust. Appls., 327; T. D. 32054.) But no case has been called to our attention in which the question has been raised as to whether or not double fabrics, which are plain on the surface but are made by an elaborate system of weaving, are plain woven.

In ascertaining the meaning of words, terms, and phrases, courts properly find the ordinary and popular definitions understood by the people, and in procuring such information they may consult the definitions given by recognized lexicographers and technical books of standard authority. The fabric before us does not conform to the dictionary definitions of the "plain weave," which are as follows:

Webster's New International Dictionary:

Plain weave.—The simplest form of weave in which the threads interlace alternately with each other.

Standard Dictionary:

Plain weave.—The first of the foundation system of weaves, the plainest possible method of interlacing threads, both warp and weft or filling threads interlacing alternately with each other. Called also cotton weave.

New International Encyclopedia:

Weaves.—While there are innumerable arrangements called weaves for the interlacing of the warp and filling threads in weaving various textile fabrics, these arrangements are all based on three primary weaves, * * * technically called the plain, twill, and satin weaves. * * *

The plain weave is the simplest form of weaving, requiring but two different movements of the warp threads.

Plain weaving is described as follows in "The History and Principles of Weaving" by Alfred Barlow (p. 67):

If a piece of plain cloth or calico be examined it will be found to consist of a number of threads placed parallel to each other, which are interlaced alternately by a single thread passing from side to side of the cloth. The separate thread is the weft thread

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and has been inserted between the other thread, called the warp, by means of a shuttle. The alternate intersection of the warp and weft threads, therefore, constitutes plain weaving.

In the standard work entitled "Technology of Textile Design," by E. A. Posselt, it is stated on page 13 that—

The different weaves are generally divided into three distinct main divisions (foundation weaves): The plain, the twills, the satins; forming the foundation of all other subdivisions of weaves classified as "derivative weaves." New weaves are also formed by the combination of weaves from the various subdivisions, etc., thus forming a field impossible to cover in detail as respects each particular weave or special fabric.

Double cloth and double weaving are classified and treated separately from the foundation weaves by Posselt, and, as described, consist of a more elaborate system of weaving than that explained for making any of the foundation weaves. The testimony shows that the merchandise in question is a double fabric, and, as such, in appearance and mode of manufacture, it is far removed from the ordinary plain woven fabrics described in the dictionaries and other authorities. An examination of the samples in evidence shows that the cloth is not figured and the witnesses who testified at the last trials said that it is not twilled; but we are still unconvinced that it is plain woven, and we conclude that a plain double weave is not actually a plain weave.

We hold that the merchandise in question is not a plain woven fabric, and the protests are accordingly overruled.

(T. D. 36194—G. A. 7866.)

Cheese in brine.

CHEESE IN BRINE—WEIGHT—DUTIABLE VALUE.

Cheese imported in brine is admittedly dutiable at 20 per cent ad valorem under paragraph 196, tariff act of 1913. To find the proper value upon which this duty shall be assessed, the landed weight shown by the report of the Government weigher should be multiplied by the unit invoice value, this value not having been advanced by the appraiser to make market value.

United States General Appraisers, New York, February 25, 1916.

In the matter of protests 765348, etc., of Coroneos Bros. against the assessment of duty by the collector of customs at the port of Philadelphia.

[Reversed.]

Peter J. Hackett for the importers.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid* and *Charles E. McNabb*, special attorneys), for the United States.

Before Board 3 (WAITE, HAY, and BROWN, General Appraisers; HAY, G. A., not participating).

WAITE, *General Appraiser:* Protest 765348 was decided by the board on August 5, 1915 (Abstract 38241), and protest 771666 on the same date (Abstract 38240). The merchandise is cheese in brine

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dutiable at the rate of 20 per cent ad valorem under paragraph 196, tariff act of 1913. The protests were originally overruled, and subsequently rehearing was granted. The two protests are now before the board for decision upon the old record and further testimony which was taken on December 2, 1915.

The records show that there was a shrinkage in weight of the cheese. The claim of the importers is that a proportionate decrease in the total invoice value should be made in cases like the present where the Government weigher's return shows a weight less than the invoice weight. The amount found by the weigher is not contested by the importers. In the former decisions in these cases it was stated that it appeared from the record that an appraisal was had, and that the unit or kilo value of the merchandise was found by the appraiser to be greater than the entered value. In the original decision it was held that if a change was desired by the importers they should have called for a reappraisement. The testimony, however, which was introduced upon the rehearing shows that the importers were not notified of the raise in value. The examiner at the port of Philadelphia, where the cheese was entered, testified at the second hearing that it is not considered that the cheese was enhanced in value over the invoice price because of the shrinkage in weight. A similar statement was also made by the assistant appraiser in a letter attached to the application for rehearing. The method by which the enhanced value was arrived at is explained by the examiner on the stand as follows: The total invoice price was taken as a dividend and divided by the amount of cheese actually landed, as reported by the Government weigher, which resulted in a price per kilo greater than the invoice price.

If, as a matter of fact, the figures given showing an advanced value per kilo were not the result of an appraisal, then it must be held that no appraisal of the goods was had; and if an appraisal is considered to have been had, the appraisal was not valid, under the ruling laid down in the case of Independent Importing Co., G. A. 6621 (T. D. 28250), notice not having been given to the importers of the advance made thereby.

It appears from the evidence that the cheese is purchased by weight exclusive of tare and the brine which surrounds the cheese. If the cheese has been enhanced in value by the shrinkage caused by the evaporation of the brine, it was the duty of the appraiser to have found the value in the country from whence shipped, at the date of shipment, of cheese in the condition in which this was landed. The advance, however, does not seem to have been arrived at by any such means. In fact we conclude, as stated above, that no appraisement really was had, as contemplated by the statute; and as the weight given by the Government weigher must be taken as the basis for determining the duty upon these shipments, we are of the opinion

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that the kilo value given on the invoice should be multiplied by the number of kilos found by the weigher, which will determine the value upon which duty should be assessed at the ad valorem rate mentioned in the statute. The protests are therefore sustained. Note McRath's case, G. A. 5848 (T. D. 25767), and cases there cited.

(T. D. 36195—G. A. 7867.)

Cheese in brine.

1. CHEESE IN BRINE—GOVERNMENT WEIGHER'S RETURN.

In determining dutiable value for purposes of assessing cheese in brine at the rate of 20 per cent ad valorem under paragraph 196, tariff act of 1913, the weight of the cheese shown by the report of the Government weigher should be accepted as the basis of liquidation, and it is improper to ignore that weight simply because the difference between the invoice quantity and that reported by the Government weigher is less than 2 per cent.

2. SUFFICIENCY OF PROTEST.

A protest claiming that duty has been assessed upon a greater quantity of merchandise than was actually imported is sufficiently specific, even though the exact number of pounds claimed is not stated.

United States General Appraisers, New York, February 25, 1916.

In the matter of protest 786718 of F. X. Baumert & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Crim & Wemple (*George C. Winne* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and BROWN, General Appraisers; HAY, G. A., not participating).

WAITE, *General Appraiser:* This case arises over the importation of certain cheese from Switzerland. The cheese is imported in casks in brine It is contended by the importers, and not contested by the Government, that cheese shrinks by reason of the evaporation of the brine in transit, so that when it is landed here the weigher's return shows a less number of pounds or kilos than the invoice. It is claimed that duty should be assessed only on the quantity actually imported.

At the beginning of the hearing the Government attorney entered an objection in the following langauge:

We object to the sufficiency of the protest and to any testimony being taken because the protest does not specify the excess weight.

The protest is in the following language:

Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties and your decision assessing duty under the tariff act of October 3, 1913, at 20 per cent ad valorem on cheese. You have assessed duty on a greater quantity than was actually imported. Duty can be legally assessed only on a quantity or value actually imported, and your action in assessing duty on a greater quantity is illegal, unconstitutional, and void.

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It will be noted that the objection is that the protest does not specify the excess weight. It does, however, distinctly state that duty has been collected upon an excess weight, and that ascertaining the exact weight or the proper weight will be the object of the controversy under the protest. The issue is the same whether it be 1 pound or 50 pounds. We are of the opinion that the protest was sufficient under the statute for all purposes required. The objection is therefore overruled.

The testimony in this case shows that the cheese itself has not been enhanced in value, and from the record it appears there is no claim that it has been. The value given upon entry per kilo appears to have been accepted by the Government. The whole question here, however, arises over the fact that the Government has ignored the shortage shown by the Government weigher and levied duty upon the full invoice weight of cheese. This method is explained by the collector in his report to the board, as follows:

In determining the total dutiable value, the appraised price per unit of quantity was multiplied by the weight of the goods landed, as shown by the return of the United States weigher, except where the difference between the total sworn invoice quantity and that reported by the United States weigher was less than 2 per cent, more or less, in which case, following the instructions of the department approving the recommendation made by the conference of collectors of customs at New York in 1913, the value of the goods was arrived at on the basis of the invoice or entered weight.

This practice has the effect of lessening the calculations incident to ascertaining the duty, also the bookkeeping associated with the refund or collection of small accounts that in the end offset one another.

We are of the opinion, however, that the return of the Government weigher, which is undisputed, can not be ignored simply for the convenience of the Government, nor because the Government, in the long run, neither makes nor loses. That might not be the case with the importer. We are of the opinion that the return of the Government weigher should have been taken as the basis for liquidation in this case and the dutiable value arrived at by multiplying the quantity shown by the weigher's return by the undisputed price per kilo at which the goods were entered. The protest is therefore sustained.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

Before Board 1, February 21, 1916.

No. 39273.—Protest 778595 of Hanover Vulcanite Co (New York)

Pyrographic Bulbs—Manufactures of India Rubber.—Merchandise invoiced as pyrographic bulbs and classified at 15 per cent ad valorem is claimed dutiable at 10 per cent under the provisions of paragraph 368, tariff act of 1913.

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Opinion by McClelland, G. A. Protest sustained as to the pyrographic bulbs, which were held dutiable at 10 per cent under paragraph 368.

No. 39274.—Protest 783205-57109 of John O. Notari & Co (Chicago).

Ruscus Leaves Sun Dried and Sulphured.—Ruscus leaves classified as ornamental leaves at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed free of duty as vegetable substances, crude or unmanufactured, under paragraph 552, or dutiable at 10 or 15 per cent under paragraphs 385 and 386

Opinion by McClelland, G. A. The leaves in question are dried in the sun and sulphured to preserve them during transportation but have to be dyed and otherwise prepared before they are adaptable either for decorative or ornamental purposes. The sulphuring process was found to preclude them from being classified as crude vegetable substances. They were held dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

No. 39275.—Protest 787791 of Ungerer & Co (New York)

Balsam Styrax.—Balsam styrax classified at 10 per cent ad valorem under paragraph 9, tariff act of 1913, is claimed free of duty under paragraph 477 or dutiable under paragraph 385.

Opinion by McClelland, G. A. On the authority of G. A. 7694 (T. D. 35172) the balsam styrax in question was held properly classified under paragraph 9.

No. 39276.—Protest 788938 of A. A. Vantine & Co. (New York).

Bamboo Lamp Shades.—Lamp shades in chief value of bamboo, classified at 25 per cent ad valorem under paragraph 175, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 176.

Opinion by McClelland, G. A. Upon stipulation of counsel the lamp shades in question were held dutiable under paragraph 176, as claimed. G. A. 7804 (T. D. 35848) followed.

No. 39277.—Protest 790978 of Roessler & Hasslacher Chemical Co. (New York).

Chrome Green Oxide—Color.—Chrome green oxide, classified at 20 per cent ad valorem under paragraph 54, tariff act of 1913, is claimed dutiable as a color at 15 per cent under paragraph 63.

Opinion by McClelland, G. A. Upon the report of the appraiser that the chrome green oxide in question is of the same character as that passed upon in Abstract 37081 (T. D. 35020), it was held dutiable as a color under paragraph 63, as claimed.

No. 39278.—Protest 793904 of H. F. Hammond (Boston).

Wool Grease.—Merchandise classified as grease not specially provided for, at 15 per cent ad valorem, is claimed dutiable as wool grease at one-fourth of 1 cent per pound under paragraph 44.

Opinion by McClelland, G. A. The commodity in question was held dutiable as wool grease, as claimed.

No. 39279.—Protest 792599 of L. S. Ayres & Co. (Indianapolis).

Women's Lambskin Gloves.—Merchandise classified as lambskin gloves under paragraphs 363 and 364, tariff act of 1913, is claimed dutiable as schmaschen under paragraph 362.

Opinion by McClelland, G. A. Protest unsupported; overruled.

No. 39280.—Protest 796211 of C. B. Richard & Co. (New York).

Glove Leather.—Unfinished glove leather classified under paragraph 359, tariff act of 1913, is claimed entitled to free entry as leather not specially provided for under paragraph 530.

Opinion by McClelland, G. A. On the authority of Abstract 37563 the merchandise in question was held free of duty under paragraph 530, as claimed.

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BEFORE BOARD 1, FEBRUARY 25, 1916.

No. 39281.—Protests 760135, etc., of Merck & Co. (New York).

CREOLIN-PEARSON—COAL-TAR PRODUCTS.—Saponified creosote known as Creolin-Pearson, classified as a coal-tar preparation at 15 per cent under paragraph 21, tariff act of 1913, is claimed free of duty as sheep dip under paragraph 596.

Opinion by BROWN, G. A. On the authority of Abstract 36180 (T. D. 34668), affirmed in Merck *v.* United States (6 Ct. Cust. Appls., —; T. D. 35274), Creolin-Pearson was held properly classified under paragraph 21.

No. 39282.—Protests 758433, etc., of Peek & Velsor (New York).

DRUGS, ADVANCED.—Althea root, calamus root, quillala bark, and quassia wood, classified as drugs at 10 per cent ad valorem under paragraph 27, tariff act of 1913, are claimed free of duty as drugs not advanced in value under paragraph 477.

Opinion by BROWN, G. A. No evidence to prove that the drugs were not advanced was offered. Protests unsupported; overruled.

No. 39283.—Protests 776654, etc., of American Shipping Co. (New York).

WASH BLUE.—Merchandise classified at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable as wash blue containing ultramarine at 15 per cent under paragraph 52.

Opinion by BROWN, G. A. The wash blue in question was held dutiable under paragraph 52, as claimed. Abstract 38840 followed.

No. 39284.—Protest 774865 of Mann & Longini Shoe Co. (Cleveland).

WOOL SLIPPERS.—Slippers returned by the appraiser as composed of wool, leather, and cattle hair, wool chief value, classified as wearing apparel in chief value of wool under paragraph 291, tariff act of 1913, at 35 per cent ad valorem, are claimed free of duty as shoes in chief value of leather under paragraph 530.

Opinion by BROWN, G. A. The statement of the manufacturer as to the cost of the respective component materials was held incompetent evidence of the facts to be proved. Protest overruled. United States *v.* Hogan (5 Ct. Cust. Appls., 1; T. D. 34001) followed.

No. 39285.—Protest 781775 of Duplan Silk Co. (New York).

SILK DRESS GOODS.—Merchandise classified as dress goods composed in part of wool at 11 cents per square yard and 55 per cent ad valorem under paragraph 381, tariff act of 1909, by reason of paragraph 310, tariff act of 1913, is claimed dutiable as woven fabrics in chief value of silk at 45 per cent under paragraph 318.

Opinion by BROWN, G. A. It was found that the cloth is in chief value of silk and it was held dutiable under paragraph 318, as claimed. Abstracts 39118 and 39119 followed.

BEFORE BOARD 2, FEBRUARY 25, 1916.

No. 39286.—Protests 785178, etc., of G. W. Sheldon & Co. (New York).

BOTTLE CAPS OF METAL, DECORATED.

FISCHER, *General Appraiser:* The merchandise has been returned by the appraiser as consisting of "plain metallic bottle caps, decorated with a design in the form of a bunch of grapes, crown, or similar design." Duty was levied thereon accordingly at the rate of 40 per cent ad valorem under the last half of paragraph 164 of the act of 1913, as bottle caps of metal, decorated, and the importers claim that said articles are properly dutiable at but 30 per cent ad valorem under the first half of said paragraph, as bottle caps of metal, not decorated.

Five samples of the merchandise are in evidence and are marked collective Exhibit 1, protest 785178, etc. On two of these samples, representative of the merchandise covered by protests 785248 and 788642, there is embossed on the top of the caps a decorative design in the form of a bunch of grapes. These particular caps are similar

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in character to certain of the merchandise passed upon by this board in the matter of protest 737811 of Oscar Hyman & Co. In our decision in that case—G. A. 7617 (T. D. 34844)—we held that, "whether a bottle cap is decorated or not must be determined solely by a recourse to the common and ordinary understanding of that term," and we reached the conclusion that a design in the form of a bunch of grapes constituted a decoration.

We there referred to previous judicial interpretations of the term "decorated," and said:

This precise question, with respect to decorations upon glass bottles, formed the basis of litigation before this board and the courts some 14 years ago, and all similar questions arising in the interim have been considered fully settled by the decisions then rendered.

In G. A. 4769 (T. D. 22503) this board, following the ruling laid down in Koscherak *v.* United States (98 Fed., 596), held that bottles with plain lettering thereon were not decorated, while bottles having thereon a design showing a basket of flowers were decorated. This ruling was affirmed by the United States Circuit Court of Appeals in Utard *v.* United States (128 Fed., 422; T. D. 25115).

In harmony with the principles laid down in said rulings, metal bottle caps having embossed thereon, but not in color, words such as "brandy," "whisky," and like terms descriptive of the contents of the bottles upon which they are to be placed, and similar to the caps represented by illustrative Exhibit B herein, would be properly classifiable under the first half of said paragraph 164 at 30 per cent ad valorem, whereas similar caps with such words embossed thereon in color would be correctly dutiable under the last half of said paragraph at 40 per cent ad valorem. Such construction would seem to give full legal effect to the words in said paragraph "not * * * embossed in color" and "embossed in color," and would also negative the importers' argument that bottle caps of metal embossed with a design not in color are specifically provided for in said paragraph at the lower rate of duty, whether or not such embossed design is fancy or plain.

In the case at bar two of the representative samples in evidence would fall within the category of bottle caps made of metal, not decorated, because the embossing thereon is not in color, nor is it decorative in character, being merely in the form of words embossed between two marginal lines, with a monogram embossed in the center. The effect produced is not what would be considered a decorative effect. These two samples are representative of the merchandise indicated on the invoices by the letter "D," and specifically covered by protests 787030 and 787932, respectively.

The remaining sample refers to the bottle caps designated by the letter "D" on the invoice covered by protest 785178. In addition to the embossed words "Dr. J. Hostetter's Stomach Bitters," which encircle the margin at the top of this particular cap, there is stamped or embossed in the center thereof the bust of a man, presumably that of Dr. Hostetter. In our judgment this picture is intended to present a decorative effect, and we therefore hold those caps to be decorated within the meaning of paragraph 164, and dutiable accordingly.

The merchandise marked "D" on the invoices covered by protests 787030 and 787932, respectively, is therefore properly dutiable at 30 per cent ad valorem under paragraph 164, and that claim in each of said protests is accordingly sustained. The remaining protests are severally and in all respects overruled.

No. 39287.—Protest 784222 of T. D. Downing & Co. (New York).

BOOKS—TEXTBOOKS.—Books entitled on the invoice "Diseases of the Skin," classified as books not specially provided for, at 15 per cent, under paragraph 329, tariff act of 1913, are claimed entitled to free entry as textbooks under paragraph 426.

Opinion by FISCHER, G. A. It was shown by the proof that the books are "Walker's Introduction to Dermatology." They were held to be textbooks, free of duty under paragraph 426. Abstract 37499 followed.

No. 39288.—Protest 780346-56858 of Rosenfield & Goodman (Chicago).

SHOW CARDS.—Show cards composed of cardboard and surface-coated and metal-coated paper, classified at 35 per cent ad valorem under paragraph 324, tariff act

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of 1913, as manufactures of surface-coated paper, are claimed dutiable at 25 per cent under paragraph 332 as manufactures of paper.

Opinion by FISCHER, G. A. Protest overruled, the record not showing that surface-coated paper is not the component material of chief value in the show cards in question.

No. 39289.—Protests 765694, etc., of American & European Forwarding Co. et al., protests 743962, etc., of L. Ballot, protests 770610, etc., of Rusch & Co. et al., and protests 730988, etc., of G. W. Sheldon & Co. et al. (New York).

FIGURED COTTON CLOTH.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton cloth, woven figured, under paragraph 252.

Opinions by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., T. D. 35501), the figured cotton cloth in question was held dutiable under paragraph 252.

No. 39290.—Protests 749099, etc., of J. C. Klein et al. (New York).

COTTON BLANKETS, TOWELS, TABLE DAMASK.—Cotton blankets, towels, quilts, table damask, tablecloths, napkins, doilies, and Jacquard figured cotton cloth, classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 263 and at the appropriate rate under paragraph 252.

Opinion by COOPER, G. A. The merchandise in question was held dutiable as follows: (1) Cotton blankets, towels, and quilts under paragraph 264; (2) cotton table damask, tablecloths, napkins, and doilies under paragraph 263; and (3) woven figured cotton cloth under paragraph 252. G. A. 7618 (T. D. 34858), G. A. 7748 (T. D. 35577), and G. A. 7630 (T. D. 34903) followed.

(T. D. 36196.)

Marble mantel—Sculpture.

UNITED STATES *v.* HALLE BROS. CO. (No. 1557).

1. ALLEGED ERROR UNASSIGNED.

This court will not review rulings of the board not assigned as error.

2. SCULPTURE—WORK OF ART.

A work in marble, said to be a copy of a mantel in the Doge's Palace, at Florence, Italy, neither copy nor original being shown to be the production of a professional sculptor, is not, following United States *v.* Downing & Co. (6 Ct. Cust. Appls., —; T. D. 36197), decided concurrently herewith, sculpture or a work of art under paragraph 376, tariff act of 1913.

United States Court of Customs Appeals, February 21, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37398.

[Reversed.]

Bert Hanson, Assistant Attorney General (*John J. Mulvaney* of counsel; *Robert Hardison*, special attorney, on the brief), for the United States.

Submitted on record by appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

In this case there is no appearance or argument on behalf of the importers.

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The merchandise is a marble mantel assessed for duty at 45 per cent ad valorem under paragraph 98 of the tariff act of 1913, and claimed before the Board of General Appraisers to be dutiable at 15 per cent ad valorem under paragraph 376.

The opinion of the board does not discuss the law or the facts. We quote the essential part of it:

> We think the evidence clearly shows that this mantel is a work of art. It is a copy of a mantel in the Doge's Palace. We further conclude that it is a sculpture within the meaning of that term as used in paragraph 376, and assessable thereunder, as claimed by the importers.

In the return of the board to this court it is stated that the exhibits are lost.

From the record it appears that the exhibits were two photographs, one purporting to represent the importation and the other an original mantel in the Doge's Palace in Venice, of which the importation is claimed to be a copy. These exhibits were both received subject to the objection and exception of the Government, and in its brief it is urged that they were inadmissible, and consequently that any findings made thereon can not be sustained. The Government, however, has failed to assign error in the admission of these photographs, hence this claim will not be further considered.

Two witnesses only testified in this case—one the business manager and the other the designer of the importers. As their evidence is brief, we insert here the substance thereof. The manager testified that he ordered the importation of an Italian named Orestes Adriania, in the little town of Petre Santa, Italy, to be used and that it had been used in furnishing an Italian room in the importers' store. He did not testify that Mr. Adriania was a sculptor. He was asked as to his reputation as such, and replied, "I heard a good deal of him in Florence as a reproducer of ancient pieces, and, in my opinion, the most beautiful things in Florence have all been reproduced by him." He said the importation was made of solid blocks of marble; that it was approximately 6 feet wide and about the same height, carved with a design chiefly floral, not particularly symbolic of anything; that he did not know whether the work was done by an artist or by an artisan in an artist's employ. At the time he gave the order he did not know what the work was to represent, but was afterwards told it represented a mantel in the Doge's Palace in Venice, but he had never seen the original. He had never executed any sculptural statuary, but was, he said, an artist "in a sense." In connection with his evidence the first exhibit was introduced.

The designer of the importers testified and produced the other photograph which he had bought in the open market in Florence. He had visited the Doge's Palace, and had seen there among others the mantel represented by the photograph which he produced, although had it not been for the notations on the photograph it

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would have been difficult for him to recollect that he had seen it. He had compared this photograph with the imported mantel and said that so far as one could judge from the photograph the importation was identical with a mantel he had seen in the Doge's Palace. He said he was an amateur photographer and an artist, and had studied architecture, preparing more especially in the decorative end of it; that in its general lines the importation was a work of art; when asked the question whether the merchandise as represented by the first photograph possessed the characteristic design and detail which would associate it with any particular artist, he answered, "Well, it rather associates it with a period of Italian art than any other way, than a particular artist, because the periods of art were carried along by a movement of artists, by a school of artists." He also said that goods of this type were regularly on sale to any purchaser.

The Government's claim in this case is that the importation is neither a work of art nor a sculpture under paragraph 376.

This case was heard with United States *v.* Downing (6 Ct. Cust. Appls., —; T. D. 36197), in which opinion is handed down concurrently herewith.

We have there expressed our views as to the interpretation to be given paragraph 376. It is manifest that the merchandise here is not a sculpture as we have interpreted that word in that paragraph, because it is not shown to possess the indispensable qualification of being the production of a professional sculptor, nor to be a copy, replica, or reproduction of the work of a sculptor. In the language of the importers' witness, it is associated with a period of Italian art rather than with any particular artist of the period.

And so far as appears the mantel in the Doge's Palace of which the importation is said to be a copy may not have been the work of a sculptor. The fact that it is of the type regularly on sale to any purchaser, coupled with the failure to show that Adriania is other than "a reproducer of ancient pieces," tends to the belief that it is a manufacture of marble, as assessed. While it may be ornamental and beautiful, we can not say upon the evidence that it rises to the standard of sculpture, and unless so, it is not a work of art within paragraph 376.

The judgment of the Board of General Appraisers is *reversed.*

(T. D. 36197.)

Stone temple—Work of art.

UNITED STATES *v.* DOWNING & CO. (No. 1591).

1. SCULPTURE—DEFINITION.

Neither the tariff act of 1913 nor paragraph 376 thereof limits the definition of the word "sculptures" as used in said paragraph, and the word must be given

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the meaning ascribed to it in common understanding. Sculpture is the production of a professional sculptor; it embodies professional skill, taste, touch, and artistic conception, appealing not only to the eye but to the emotions as well.

2. COPY—REPLICA—REPRODUCTION.

A copy, replica, or reproduction under this paragraph must possess the same qualities or characteristics, and must be made by a professional sculptor or under his supervision.

3. LEGISLATIVE HISTORY SHOWING LEGISLATIVE INTENT.

The history of this legislation shows that Congress did not intend, by enacting paragraph 376 as new legislation in the act of 1913, to lower the standard of work necessary to constitute sculpture or to dispense with the requirement that such work must be produced by, or under the supervision of, a sculptor, thereby admitting at a low rate of duty the commercial productions of artisans because of characteristics rendering them attractive, ornamental, or beautiful.

4. MANUFACTURES OF MARBLE—WORK OF ART—SCULPTURE

Marble parts of a temple designed as an ornament for a yard or garden, which are embellished or ornamented with more or less elaborately cut or carved representations of various kinds, there being no claim that they are the professional production of a sculptor, are dutiable, under paragraph 98, tariff act of 1913, as manufactures of marble, and not under paragraph 376 as works of art or sculpture.

5. SAME

If these parts are not sculpture, it follows that they are not works of art under paragraph 376

6. PARTS—WHOLE

Having denied classification as works of art to the parts of this temple, the court refuses to classify the whole temple as a work of art.

United States Court of Customs Appeals, February 21, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7747 (T. D. 35564).

[Reversed.]

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

Kenneth Howes for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

As stated in the opinion of the Board of General Appraisers the entire importation here in question is described in the invoice as follows:

Stone round temple "Palladio" of the seventeenth century.
Stone ring.
Iron dome in three parts for the temple
Round marble table.

At the beginning of the hearing before the board all claims upon the last three mentioned items or parts of the temple were abandoned, the reason for which, as stated by importers here, was that their expert witness was of opinion that the stone ring, the iron dome, and round marble table were new parts, and the record seems to support the statement.

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The merchandise was assessed by the collector under paragraph 98 of the tariff act of 1913, which is as follows:

98. Marble, breccia, onyx, alabaster, and jet, wholly or partly manufactured into monuments, benches, vases, and other articles, or of which these substances or either of them is the component material of chief value, and all articles composed wholly or in chief value of agate, rock crystal, or other semiprecious stones, except such as are cut into shapes and forms fitting them expressly for use in the construction of jewelry, not specially provided for in this section, 45 per centum ad valorem

The protest claimed free entry under paragraph 652, as well as under paragraph 656. The board denied free entry, but sustained another alternative claim in the protest that the merchandise was dutiable under paragraph 376, which is here quoted:

376. Works of art, including paintings in oil or water colors, pastels, pen and ink drawings, or copies, replicas or reproductions of any of the same, statuary, sculptures, or copies, replicas or reproductions thereof, and etchings and engravings, not specially provided for in this section, 15 per centum ad valorem

The Government only appeals, hence the precise issue is whether the merchandise is dutiable as assessed or as held by the board.

Considered as an entirety the importation is a round temple, the dimensions of which are not shown. It is represented by photographic exhibits and is probably intended to be set up in a yard or garden. It does not appear to be designed to serve any special utilitarian purpose and is claimed to be devoted to and designed for artistic purposes. By Exhibit 5 the general appearance and circular form is shown. The main structure seems to be composed of marble or stone resting upon a foundation and surmounted by a dome. The board assumed, and we judge correctly, that the stone ring which was mentioned in the invoice and which consists of several pieces was in whole or in part of this foundation; that the dome was a grille work of iron; and that the marble table, if designed in connection with the temple, was appropriate to be placed inside. With the foundation stones, the dome, and the table we are not concerned, except so far as they are involved in the question of entirety hereinafter referred to.

Exhibit 1 represents eight pedestals of rectangular shape, each of which supports one column represented by Exhibit 2. Exhibit 3 is a representation of one of the pieces resting upon and supported by the columns, of which pieces there are a sufficient number to constitute a stone cornice or frieze, which in turn supports the iron dome. Exhibit 4 represents seven pedestals or supports upon which rest the respective parts of a marble bench which extends around the temple between the pedestals except at the entrance. This bench is referred to by the board as a low balustrade with extended slabs forming seats. Each of the pedestals is of ornamental appearance, with heraldic devices or designs cut or carved upon the sides; the columns are

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circular, with various ornamental designs cut or carved thereon; the pieces which constitute the cornice or frieze are also somewhat elaborately ornamented and so are the pedestals or supports of the seats or bench.

The issue therefore is as to the classification of the articles represented by these four exhibits last mentioned, all of which are of marble and, as appears, are embellished or ornamented with more or less elaborately cut or carved representations of various kinds upon the surfaces thereof. For convenience these will be collectively hereinafter referred to as the temple.

The Government contends that the board erred in that it did not assess the whole importation as an entirety, which claim we do not find it necessary to consider; also that the temple, if considered as an entirety, is not a work of art within the contemplation of paragraph 376, and in this connection urges that to be a work of art thereunder the temple must be a sculpture, as that term is properly defined.

In passing upon the importers' alternative claims of free entry under paragraph 656 the Board of General Appraisers found that the antiquity necessary for free entry thereunder had not been shown.

As the consideration of the issues requires more or less reference to paragraph 652, we here insert the same:

652. Original paintings in oil, mineral, water, or other colors, pastels, original drawings and sketches in pen and ink or pencil and water colors, artists' proof etchings unbound, and engravings and woodcuts unbound, original sculptures or statuary, including not more than two replicas or reproductions of the same; but the terms "sculpture" and "statuary" as used in this paragraph shall be understood to include professional productions of sculptors only, whether in round or in relief, in bronze, marble, stone, terra cotta, ivory, wood, or metal, or whether cut, carved, or otherwise wrought by hand from the solid block or mass of marble, stone, or alabaster, or from metal, or cast in bronze or other metal or substance, or from wax or plaster, made as the professional productions of sculptors only; and the words "painting" and "sculpture" and "statuary" as used in this paragraph shall not be understood to include any articles of utility, nor such as are made wholly or in part by stenciling or any other mechanical process; * * *.

Touching the claim for free entry under this paragraph the board said:

The law as found in paragraph 652 provides for the free importation of "original sculptures." It further provides, however, that the term "sculpture" as used in the paragraph shall be understood to include professional productions of sculptors only. Testimony that this production was by a professional sculptor, or that it is an original, was not furnished by the importer. Hence we conclude that the case has not been brought within the purview of paragraph 652.

From the judgment of the board that the temple was not entitled to free entry under either of those paragraphs the importers took no appeal. There is therefore no claim here that it is an original sculpture or the professional production of a sculptor only.

After so far disposing of the importers' claims the board proceeded to discuss the question of whether the temple could be classified

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under paragraph 376 as a work of art. It was their opinion that if of sufficient excellence it might be so classified, and as a witness for the importers had testified that it was a work of art and a witness for the Government that it was highly artistic, held that it was a work of art thereunder.

The Government had claimed that it could not be so classified in that it was not *ejusdem generis* with other works of art mentioned therein. Of this the board said "we do not agree with this contention, however, because if it is a work of art at all, within the meaning of the paragraph, it is as 'sculptures' specifically mentioned in the paragraph."

The board's judgment, therefore, if we correctly understand the opinion, was this: The importation under consideration was not shown to possess the antiquity required under paragraph 656, nor to be an original sculpture, the production of a professional sculptor only, or one of not more than two replicas or reproductions thereof under paragraph 652, but was, nevertheless, a work of art under paragraph 376 because it was a sculpture thereunder.

This conclusion at once suggests the query as to what is the difference, if any, between the meaning of the term "sculptures" in paragraphs 652 and 376. It should be observed that paragraph 376 includes sculptures in the term "works of art," and provides that sculptures shall embrace copies, replicas, or reproductions thereof if none of the same are otherwise provided for in the section. Paragraph 652, on the other hand, limits the "sculptures" therein provided for to originals, which are the professional productions of sculptors only, whether cut, carved, or otherwise wrought by hand from certain materials, and made as the professional productions of such sculptors, including not more than two replicas or reproductions of the same, with the proviso that articles of utility as well as those made wholly or in part by stenciling or other mechanical process are not to be included therein, but it does not undertake to give any meaning to the word other than for the purposes of that paragraph.

Further examination of paragraph 652 shows that the provisions of paragraph 470 of the act of 1909 have been embodied therein. For convenience we insert here the earlier paragraph:

470. Paintings in oil or water colors, pastels, pen and ink drawings, and sculptures, not specially provided for in this section, fifteen per centum ad valorem; but the term "sculptures," as used in this act, shall be understood to include only such as are cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as are the professional production of a sculptor only, and the term "painting," as used in this act, shall be understood not to include such as are made wholly or in part by stenciling or other mechanical process.

We think comparison of the two shows that in a general way it was the purpose of Congress by the enactment of paragraph 652 to give free entry to articles that had previously been dutiable under para-

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graph 470. One of the chief differences between the two is that such privilege is confined to two replicas or reproductions of sculptures and that articles of utility or such as are made wholly or in part by stenciling or other mechanical processes (the methods of the artisan) are excluded therefrom.

We also note that paragraph 470 enumerates certain things that shall be considered "sculptures" for the purposes of the act, while paragraph 652 confines its enumeration in that behalf to the purposes of the paragraph.

On the other hand, paragraph 376, which is new law, does not expressly define "sculptures," and does not limit the number of copies, replicas, or reproductions thereof that are entitled to the same benefit. It follows, therefore, that the word must be given the meaning ascribed to it in common understanding unless elsewhere limited. No such limitation is called to our attention. As to the common meaning of the word we have the benefit not only of cases disposed of by this court, but others as well, in which paragraph 470 and its predecessors have been considered and compared with paragraph 112 of the act of 1909 (identical with paragraph 98 of the act of 1913 except as to rate) and others *in pari materia*.

In the United States *v.* Baumgarten (2 Ct. Cust. Appls., 321; T. D. 32052) it was held that paragraph 112 of the act of 1909 did not embrace artistic productions in marble of figures whose value depended "either upon the individual conception of the artist or upon his professional taste, touch, and spirit in execution," and that the term "marble manufactured" as used there would not be understood to cover a marble vase upon which a sculptor had chiseled lifelike figures, the whole comprising a single professional production full of artistic character, but was rather limited to commercial productions often of utilitarian character and produced in whole or in part by machinery or by the hand of a mere artisan. The meaning of the word "sculptures" in common understanding was considered by the court in this case.

In Lazarus *v.* United States (2 Ct. Cust. Appls., 508; T. D. 32247), comparing paragraphs 112 and 470 of the act of 1909, it was said in substance that the legislative intent was to protect the labor and industrial arts of this country against competition of cheaper similar labor in foreign countries and also designed to permit, in the interest of art and education, the introduction into this country at a low rate of duty of such sculptures as are the product of a higher order of skill and artistic conception.

In Consmiller *v.* United States (3 Ct. Cust. Appls., 298; T. D. 32585) it was said in discussing the meaning of "sculptures" in said paragraph 470, "though sculptor and decorator may both work in stone, between them there is a very wide gulf and the domain of one

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is seldom, if ever, invaded by the other. Ordinarily the ornamentalist in stone imitates that which he actually sees and his work goes no further than to please the eye. The sculptor, on the other hand, reproduces that which is pictured by his imagination; and his production appeals not only to the eye but to the emotions as well. In fine, one copies and the other, in a sense, creates and originates."

For other cases in this court announcing, so far as they touch upon the question, similar conclusions, see Stern *v.* United States (3 Ct. Cust. Appls., 124; T. D. 32381); Warren *v.* United States (3 Ct. Cust. Appls., 461; T. D. 33039); Downing *v.* United States (3 Ct. Cust. Appls., 473; T. D. 33043); United States *v.* Sterling Bronze Co. (4 Ct. Cust. Appls., 389; T. D. 33835); Marshall Field & Co. *v.* United States (5 Ct. Cust. Appls., 191; T. D. 34324). See also Tutton *v.* Viti (108 U. S., 312), Merritt *v.* Tiffany (132 U. S., 167), Benziger *v.* United States (192 U. S., 38), Express Co. *v.* United States (94 Fed., 643, affirmed in 101 Fed., 111), United States *v.* Tiffany (160 Fed., 408), Vandegrift *v.* United States (162 Fed., 1003), Townsend *v.* United States (108 Fed., 801, affirmed in 113 Fed., 442).

The fact that paragraph 470 limited sculptures to the professional productions of sculptors only, a limitation not found in paragraph 376, as already noted, does not, as we view the matter lower the standard or quality of work required to constitute a sculpture within the meaning of the latter paragraph. In the common acceptation of the term, a work to be entitled to the characterization of sculpture must be the production of a professional sculptor. It must be a work that embodies professional skill, taste, touch, and artistic conception, appealing not only to the eye but the emotions as well, and although "sculptures" may include under the statute copies of recognized works of that art, yet such copies must possess the same qualities or characteristics, and, whether an original or a copy, must be made either by or under the supervision of a professional sculptor. It is unbelievable that a sculpture in the common understanding can be produced by one who has neither embraced that profession nor has artistic skill, taste, touch, or ability in exercising it.

Indeed, to hold otherwise would seem to result in a conflict of meaning or confusion of terms. A sculpture must obviously be the production of a sculptor and a sculptor would naturally be understood to mean a person who was in whole or in part engaged in the practice of that profession. To do this successfully (and without some degree of success one would not long be so engaged) it follows that the sculptor must have had instruction and experience in the art. To be successful to the end that his productions might attain the distinction of works of art it would further seem indispensable that he should possess artistic conception, taste, sense, and skill, together with the requisite ability to reproduce or present the same to the

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beholder or at least to see that others did it for him. In other words, a sculptor, in the common meaning of the word, is not a skilled artisan, but a person who is capable of making or who does make sculpture his profession.

The use of the word "copies" in paragraph 376 in connection with the words "replicas or reproductions" does not justify or require any different conclusion.

"Replica" is by lexicographers generally in substance defined to be a duplicate executed by the artist making the original and to be considered as an original. Sometimes it is expressly related to works of art. (See Century and Standard dictionaries.)

The word "reproduction" signifies a thing which is reproduced, as well as the act of reproduction, and appears more often to refer to a function of living organisms. See discussion under "synonyms" following the word "duplicate" in the Standard Dictionary, wherein, among other things, it is said "a replica is a copy of a work of art by the maker of the original," and generally that "a copy is as near like the original as the copyist has power to make it; a duplicate is exactly like the original; * * * we may have an inaccurate copy but never an inaccurate duplicate."

The word "copy" is given many definitions. Among its synonyms are "reproduction," "imitation," "duplicate," and it evidently has a wider scope than is generally applied to "reproduction," but may not correctly include "replica." It also means that which is used as a model.

So far as we are advised the words "copies, replicas, or reproductions" have not before appeared in tariff statutes *in pari materia*, but it has been settled that "statuary" includes copies or reproductions thereof made under certain conditions.

In Tutton *v.* Viti (108 U. S., 312) copies of antique original models of unknown authorship, as well as copies of modern originals, the author of which was known, all such copies having been made by professional sculptors, were held to be statuary and the professional productions of a sculptor, the court saying (at pp. 313 and 314):

> There is nothing in the acts of Congress to limit the professional productions of a statuary or sculptor to those executed by a sculptor with his own chisel from models of his own creation and to exclude those made by him, or by his assistants under his direction, from models or from completed statues of another sculptor, or from works of art, the original author of which is unknown. An artist's copies of antique masterpieces are works of art of as high a grade as those executed by the same hand from original models of modern sculptors.

It was also held that it was the evident intent of Congress to put a much lower duty on statuary which was the professional production of a statuary or sculptor than on other manufactures of marble, the purpose being—

> To encourage the importation of works of art by distinguishing between the production of an artist and those of an artisan or mechanic; between what was done in a

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sculptor's studio by his own hand or under his eye and what is done by workmen in a marble shop.

It will be noted that the court employs the word "copies" to designate the merchandise in the case.

In Merritt *v.* Tiffany (132 U. S., 168) bronze statues required by law "to be the professional productions of a statuary or professional sculptor only" were under consideration, and, citing the case last mentioned, it was again in effect held that copies of original works of art made under the direction or supervision of a sculptor, whether the originals were his creation or were the creation of some other artist, were nevertheless sculptures, and that it was the intent of Congress to distinguish between such productions and those of the manufacturer or mechanic. In this case the court employs the word "reproductions" as describing the merchandise. The effect of both these cases is that sculpture or statuary may include copies or reproductions by sculptors of works of art, the original design of which was their own or that of some other artist.

In this connection we observe that during the hearings before the Ways and Means Committee, the Association of American Painters and Sculptors duly appeared by its representative and made various suggestions and requests as to the treatment to be given to works of art in the new tariff law. (See vol. 5, pp. 5692 *et seq.*, of Tariff Schedules Hearings, 3d sess. 62d Cong.) Among other things it was suggested that the 20-year age limit for works of art, including paintings and sculptures, contained in the first completed sentence in paragraph 717 of the act of 1909 be abrogated and that a paragraph (which was tendered and was in its applicable provisions much like paragraph 652 as finally enacted) be substituted therefor; also that the last completed sentence in paragraph 717 relating to other works of art (except rugs and carpets) be retained. It was said with reference to statuary that there came a time when replicas or copies ceased to be art by reason of the number thereof and became objects of trade, and to prevent this it was suggested that the number of replicas entitled to free entry ought to be limited and any larger number be taxed.

The committee was asked, if this view was adopted, to embody in the bill a new section, which was submitted, providing for a duty of 15 per cent ad valorem. This proposed section, in principle, was quite like paragraph 376 as found in the present law. In this connection it was expressly pointed out that the result of the suggestions so made to the committee, if adopted, would admit original sculpture that was a work of art made by a professional artist and a specified number of replicas of the same free of duty, while additional copies or replicas would be taxed as provided in the tendered paragraph, thereby protecting, as it was said, "trade sculptors" from competition

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with similar workmen abroad. It was also claimed, and with some show of reason, that such a provision would tend to keep out forgeries because it was urged "all importations of art will have to be accompanied by some proof that they are original works of art or else have to pay duties as copies."

The Italian Chamber of Commerce also preferred its request to the committee that works of art regardless of age should be admitted to free entry if the original production of artists. (Vol. 5, p. 5009.)

It was not, so far as we can learn, claimed by anyone that an unlimited number of reproductions or copies of works of art, whether made by professional sculptors or artisans, should be given free entry, or that, if made by artisans only, they should not be classified as manufactures of marble.

As indicative of the effect of these representations upon the Ways and Means Committee and upon Congress, it appears that that part of paragraph 717 the repeal of which was recommended was not reenacted, except as some equivalent provisions may be found in paragraph 652; that the part of the same paragraph the retention of which was advised has been preserved in paragraph 656; and that paragraph 376, which, as we have already pointed out, corresponds in principle with the new paragraph suggested, has been enacted.

Now, in view of the foregoing we deem it unnecessary to attempt to define the exact scope of the words "copies or reproductions" in paragraph 376. They may have been employed in this new statute as a legislative adoption, for its purposes, of the sense in which these words had been used by the Supreme Court in the cases above referred to, and for the purpose of avoiding litigation, or they may have been used with the intent of carrying out in principle the recommendations of the representative of the Association of American Painters and Sculptors, or for both these purposes.

But in either, or, indeed, in any view, we unhesitatingly conclude that it was not the purpose of Congress in enacting paragraph 376 as new law to lower the standard of work necessary to constitute sculptures, nor to dispense with the requirement that such work must be produced by or under the supervision of a sculptor. Neither was it thereby intended to raise from the class of manufactures of marble under paragraph 98, as the same had been judicially determined under paragraph 112 of the act of 1909, and statutes *in pari materia*, such articles as those now before us.

So far as appears in this case we find no reason to believe that Congress by the reenactment in paragraph 98 of paragraph 112 of the act of 1909 intended it should have a different application than that which it had theretofore received.

The n. s. p. f. provision in paragraph 376 coupled with the absence of the word "original" before sculptures leaves wide scope for the operation of the paragraph. An article which would be a sculpture

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under paragraph 652 would be likewise such under paragraph 376, and, after the limited number of replicas or reproductions provided in paragraph 652 had been given free entry, further copies, replicas, or reproductions thereof would be classifiable under paragraph 376. But the essential qualification that the original must be of the quality entitling it to rank as a work of art is not removed. Any different conclusion would seem to result in opening the door to the low rate of duty provided in the paragraph for a great variety of objects, if they possess characteristics that render them attractive, ornamental, or beautiful, although nothing more than the production of an artisan and made purely for commercial purposes. We are of opinion Congress did not so intend.

We disagree with the importers' claim that even though the temple is not a sculpture it is nevertheless classifiable as a work of art under paragraph 376. We think the board was right in holding that it was only by virtue of being a sculpture that it was entitled to such classification. Therefore failing to find it a sculpture it can not be considered a work of art. See in this connection United States *v.* Perry (146 U. S., 71).

There is another feature of this case to which attention should be called. Without taking time or space to recite the evidence of record it appears therefrom that under their claim for free entry the importers undertook to show that the temple was of the antiquity provided in paragraph 656, more than 100 years, and also that it was an original sculpture or one of two replicas or reproductions thereof made by a professional sculptor under paragraph 652 and their evidence, undisputed, tended to establish these facts.

The Government's evidence overwhelmingly, as we think, and doubtless it was so considered by the board, negatived each of these claims and established that the temple had been produced partly by machinery, within less than 50 years, and in addition had been designedly treated with applications tending to produce and which had produced a simulated appearance of antiquity evidently sufficient to mislead the importers' expert witness. In other words, methods had been deceitfully employed to make the marble appear to be older than in fact it was. We take occasion to say here, however, that this is not imputed to the importers.

The Government's evidence also tended to establish, and we think did establish, that much of the alleged carving upon the parts composing the temple was neither artistic nor skillful in design or production and was not a work of sculptural art.

Now, to say that although considered with regard to its essential parts the temple is not artistic, yet as a whole it is a work of art, would be going far in view of the patent deceit attempted with regard to its age.

The judgment of the Board of General Appraisers is *reversed*.

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(T. D. 36198.)

Parts of jewelry.

MAMLUCK & CO. *et al.* *v.* UNITED STATES (No. 1603).

1. LEGISLATIVE HISTORY SHOWING INTENT—ALL PARTS OF STATUTE GIVEN EFFECT.
Paragraph 356, tariff act of 1913, as reported to the House by the committee, was deliberately amended in the House by the insertion of the words "60 per centum ad valorem" in the first clause. No interpretation will give due effect to this amendment except that the jewelry clause was thereby segregated from the three following clauses of the paragraph and converted into a complete and independent provision. It follows that the words "parts thereof" and "composed of metal" in the fourth clause do not refer to "jewelry" in the first.

2. NECKLACE CLASPS AND WATCH-CHAIN COMPASSES—HOW DUTIABLE.
Necklace clasps composed of base metal set with imitation precious stones and metal and glass watch-chain compasses, metal being chief value, both articles being conceded to be "parts of jewelry," are dutiable under the last clause of paragraph 356, tariff act of 1913, as "materials of metal, * * * finished or partly finished, * * * suitable for use in the manufacture of any of the foregoing articles in this paragraph," viz, "jewelry, * * * valued above 20 cents per dozen pieces," in the first clause thereof.

3. EVIDENCE—PRESUMPTIONS—COLLECTOR'S FINDING OF FACT PRESUMED CORRECT.
It is admitted that the clasps are valued above 20 cents per dozen and this necessitates a value above that for necklaces fitted with them. The collector's finding that watch chains fitted with these compasses are valued at more than 20 cents per dozen is presumptively correct, and in the absence of rebutting evidence, is final.

United States Court of Customs Appeals, February 21, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7755 (T. D. 35592).

[Modified.]

Comstock & Washburn (*Albert H. Washburn* and *George J. Puckhafer* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Before SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

There are two articles of merchandise involved in the present case, both imported under the tariff act of 1913. These are metal necklace clasps valued at more than 20 cents per dozen pieces, and small compasses composed of metal and glass valued at less than 20 cents per dozen pieces. It is conceded for the purposes of this case that both articles are designed for use in the manufacture of jewelry.

The collector classified the necklace clasps as "parts of jewelry," and assessed duty thereon at the rate of 60 per cent ad valorem under paragraph 356 of the act. The compasses were classified as "material composed in chief value of metal, suitable for use in the manufacfacture of watch charms," and were assessed with duty at the rate of

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50 per cent ad valorem under the last provision of the same paragraph. Paragraph 356 is the "jewelry paragraph" of the tariff act of 1913.

The importers protested against the assessments, claiming assessment of the articles at the rate of 20 per cent ad valorem as manufactures of metal under paragraph 167 of the act. Various alternative claims were presented by the importers, which, however, are not pressed in their argument.

The protests were submitted upon evidence to the Board of General Appraisers, and were overruled. The board held that the compasses as well as the clasps should bave been assessed at the rate of 60 per cent ad valorem under the paragraph in question; therefore the collector's action in assessing only 50 per cent ad valorem upon the compasses, while not reversed, was not approved by the board.

The importers appeal.

The following is a copy of the paragraph in question:

356. Jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces, 60 per centum ad valorem; rope, curb, cable, and fancy patterns of chain not exceeding one-half inch in diameter, width, or thickness, valued above 30 cents per yard; and articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, card cases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones or imitation pearls, 60 per centum ad valorem. Stampings, galleries, mesh and other materials of metal, whether or not set with glass or paste, finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles in this paragraph, 50 per centum ad valorem.

There seems to be no dispute about the character of the present articles, the sole question in the case relating to the interpretation of the jewelry paragraph just copied. The necklace clasps are composed of base metal set with imitation precious stones. They are intended to be attached to the ends of necklaces and serve as snaps or clasps for the same. They are conceded in the present argument to be entitled to the name of "parts of jewelry," and to be valued at more than 20 cents per dozen pieces. The compasses are small articles composed of metal and glass, metal being chief value. It is said without contradiction that they are used in the manufacture of watch charms. The exact value of the compasses is not stated in the record, but it was found by the board and is conceded by the parties that they are valued at less than 20 cents per dozen pieces. It is also conceded for the purposes of this case that they are entitled to be called "parts of jewelry."

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Upon the foregoing facts we are of the opinion that both of the articles in question should have been assessed at 50 per cent ad valorem under the last provision of paragraph 356, *supra*, as "materials of metal, * * * finished or partly finished, * * * suitable for use in the manufacture" of certain of the articles theretofore enumerated in the paragraph. This conclusion rests upon the following premises:

As appears in the Congressional Record (63d Congress, vol. 50, pt. 2, p. 1081) the jewelry paragraph of the tariff revision of 1913 was reported to the House of Representatives by the Ways and Means Committee in the following terms, viz:

367. Jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces; rope, curb, cable, and fancy patterns of chain not exceeding one-half inch in diameter, width, or thickness, valued above 30 cents per yard; and articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, card cases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones, 60 per centum ad valorem. Stampings, mesh and other materials of metal, whether or not set with glass or paste, finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles in this paragraph, 50 per centum ad valorem.

As appears from the same page of the Congressional Record above cited, the foregoing paragraph was amended in the House as follows:

Mr. PALMER. Mr. Chairman, I offer the following amendment.
The clerk read as follows:
Page 91, line 2, after the word "pieces" insert the words "60 per cent ad valorem."
The amendment was agreed to.
Mr. PALMER. Mr. Chairman, I offer the further amendment.
The clerk read as follows:
Page 91, line 17, after the word "stones" insert the words "or pearls."
The amendment was agreed to.
Mr. PALMER. Mr. Chairman, I offer the further amendment.
The clerk read as follows:
Page 91, line 18, after the word "stampings" insert the word "galleries."

It will be observed that the paragraph as thus introduced and amended was finally enacted as paragraph 356, *supra*, without any other alteration except the addition of the word "imitation" preceding the word "pearls" at the close of the 60 per cent classifications therein.

A reading of the paragraph as introduced by the committee immediately discloses the fact that the classification of "jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces," like the two classifications which followed it in the paragraph, was

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modified by the clause, "all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones, 60 per centum ad valorem." It was this latter clause which prescribed the rate of duty for all of the articles named in the three several clauses which preceded it in the paragraph. By the terms of this clause the prescribed rate was made to apply to jewelry and also to "parts thereof, finished or partly finished," subject, however, to the limitation that they should be "composed of metal." These two important modifying phrases, one of extension and the other of restriction, plainly related to "jewelry, commonly or commercially so known," as well as to the other classes of articles named in the 60 per cent provisions of the paragraph, as the same was introduced by the committee.

However, when the paragraph was amended by the insertion of the words "60 per centum ad valorem" immediately after the provision for "jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces," the jewelry clause was thereby segregated from the succeeding clauses of the paragraph and converted into a complete and independent provision. Consequently the two modifying provisions just named no longer applied to it. No other interpretation than this would give due effect to the amendment in question. The amendment manifestly did not seek to change the rate of duty which was imposed upon jewelry by the paragraph as it first stood, for the same rate of duty, to wit, 60 per cent ad valorem, was prescribed by the amendment itself. The amendment must therefore have been intended to effect some change in the description of the articles upon which that rate of duty was imposed. This apparently was accomplished by withdrawing "jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces," from its integral association with the three following clauses of the paragraph, and making the same dutiable under that description alone at the rate of 60 per cent ad valorem. Because of this amendment the terms of the fourth clause of the paragraph ceased to modify or affect the first clause, and the enumeration of "jewelry, commonly or commercially so known" was no longer enlarged by the phrase "parts thereof," nor limited by the proviso "composed of metal." Therefore, since the paragraph as thus amended laid no duty upon parts of jewelry as such, the collector's assessment of the necklace clasps under that name was unauthorized.

It is contended that the foregoing construction must be erroneous because according to it there would be no provision in the jewelry clause for parts of jewelry or for jewelry partly finished, such as ap-

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peared in the jewelry paragraphs of almost all of the preceding tariff revisions, and furthermore because according to it the clause "whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones or imitation pearls," which is peculiarly applicable to the jewelry provision, would be withdrawn therefrom and be given exclusive reference to articles of personal convenience such as buckles, card cases, chains, cigar cases, etc.

This contention is certainly entitled to great consideration. In the jewelry paragraph of the tariff act of 1909 provision was made for "all articles commonly or commercially known as jewelry, or parts thereof, finished or unfinished." As has been stated, the present paragraph, according to our interpretation, omits the provision for "parts thereof, finished or unfinished." But on the other hand, the former act did not in terms restrict the provision for jewelry to such articles only as were composed in chief value of metal, whereas the importers' contention would give that effect to the present paragraph.

This consideration, however, as well as the reference to the modifying clause "whether or not set with precious stones," etc., seems to be subordinate to the fact that the paragraph as first introduced in the House directly and unmistakably grouped the enumeration of "jewelry, commonly or commercially so known," with the other enumerations of the 60 per cent provisions, and modified all of them by the provision for "parts thereof," and the provision "composed of metal," and that thereupon the amendment was carried which either had the effect of segregating "jewelry, commonly or commercially so known," from the residue of the paragraph, or else had absolutely no effect at all. The court should hardly adopt such a construction of the paragraph as would reduce the amendment in question to mere supererogation.

We therefore conclude that the clause beginning with the words "all the foregoing" was by force of the amendment limited in application to the two clauses which precede it in the paragraph. These clauses are plainly not complete within themselves, for the rate of duty applicable thereto is not contained in either. This omission necessarily implies that a supplementary clause must follow in order to complete them, and this office is fulfilled by the fourth clause. The first clause, however, as amended, is complete within itself, both as to enumeration and rate of duty, and stands as an independent provision without the aid of the fourth clause.

The Government in its brief adopts the view just expressed, but contends that the necklace clasps were dutiable nevertheless at the rate of 60 per cent ad valorem under the third clause of the same paragraph, which levies that rate of duty upon "aticles valued above 20 cents per dozen pieces designed to be worn on or about or attached

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to the person, such as and including * * * chains, * * * and like articles." This clause, as already stated, is concededly modified by the provision for "all the foregoing and parts thereof, finished or partly finished, composed of metal." We do not believe, however, that necklaces would in common speech be included within the name "chains," nor that they are articles "worn on apparel or carried on or about or attached to the person," *ejusdem generis* with the articles which are specified in the provision in question. The term "like articles" in the third clause of the paragraph could not have been intended to cover articles of jewelry as such.

On the other hand it seems clear that the necklace clasps in question fall naturally within the last provision of the present paragraph. They are materials of metal, finished or partly finished, suitable for use in the manufacture of "jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces." The question of value under the foregoing provision can not be raised in the case of the clasps since it is conceded that they are themselves valued at more than 20 cents per dozen pieces. It must follow that the necklaces to which they may be attached would likewise have that value.

In respect to the compasses it may be noted again that the collector assessed the same under the last provision of the present paragraph at the rate of 60 per cent ad valorem. It is contended by the importers that the assessment is erroneous since it does not appear from the record that they are suitable for use in the manufacture of jewelry or such other articles as are named in the paragraph, valued at more than 20 cents per dozen pieces. The importers contend that the compasses themselves are concededly valued at less than 20 cents per dozen pieces, and that the record does not disclose the value of the finished articles of which they may become a part. Therefore it is argued that they can not be classified as materials for the manufacture of articles valued at more than 20 cents per dozen pieces.

It must be remembered, however, that the provision in question covers such materials of metal as are "suitable" for the manufacture of jewelry or of certain other enumerated articles valued above 20 cents per dozen pieces. The compasses are conceded to be in chief value of metal, and the collector has held them to be suitable for use in the manufacture of certain articles which fall, both in character and value, within the preceding enumerations of the paragraph. The question of suitability is one of fact, with the presumption in favor of the collector's finding, and there is nothing in the record which tends to rebut that finding.

In accordance with the views above expressed we affirm the decision of the board in so far as it sustains the assessment of the compasses at 50 per cent ad valorem, but reverse the same in so far as it sustains

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the assessment of the necklace clasps at the rate of 60 per cent ad valorem. And we remand the case for reliquidation so that the clasps may be assessed at the rate of 50 per cent ad valorem, that being the correct assessment thereon, and being also within the importers' protest.

Modified.

(T. D. 36199.)

Rakes—Agricultural implements.

UNITED STATES *v.* TOWER (No. 1639).

1. AGRICULTURAL IMPLEMENT—DEFINITION.

An agricultural implement serves some purpose in the production of food from the soil or in the raising of domestic animals thereon.—United States *v.* Boker & Co. (6 Ct. Cust. Appls., —; T. D. 35472) followed.

2. LAWN RAKES—HOW DUTIABLE.

Iron lawn rakes with wooden handles, chiefly, if not exclusively, used for raking lawns, either to clear them of leaves or other rubbish or to gather up the cut grass left by a lawn mower, serve no agricultural purpose and are not admissible free under paragraph 391, tariff act of 1913. They are dutiable under paragraph 167 as a manufacture in chief value of metal.—Abstract 37178 discussed.

United States Court of Customs Appeals, February 21, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38713.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Crim & Wemple (*William L. Wemple* of counsel) for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The present articles are certain 14 bundles of rakes, which were imported under the tariff act of 1913. The rake heads are metal, the handles wood.

The collector assessed duty upon the importations at the rate of 20 per cent ad valorem under the provision for manufactures in chief value of metal contained in paragraph 167 of the act.

The importer protested, claiming free entry for the articles under the free-list provision for agricultural implements contained in paragraph 391 of the act.

The issue was submitted to the Board of General Appraisers, who sustained the protest. The Government now appeals.

The following is a copy of the several paragraphs thus cited:

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver.

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and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

391. Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators, thrashing machines, cotton gins, machinery for use in the manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts.

It is therefore plain that the sole question in the present case is whether the imported rakes are "agricultural implements" within the purview of paragraph 391 just copied.

The appraiser, in his official report, described the articles as "iron lawn rakes." This description was adopted by the collector, who held the articles to be lawn rakes. The importer himself was the sole witness in the case, and it may fairly be said that he acquiesced in this descriptive name of the articles. This statement is predicated upon the following questions and answers, appearing in his examination:

Q. (By Mr. LAWRENCE.) Take up protest 756935. The merchandise in this case is invoiced as 7 dozen lawn rakes; did you see those goods when imported?—A. Yes, sir.

Q. Have you brought a sample with you?—A. Yes, sir.

Q. Is this it?—A. That is it.

Q. There seems to have been two lots of rakes, one 16 inches and one 18 inches?—A. One was 2 inches shorter than the other.

Q. What is this one?—A. 16 or 18 inches; I haven't measured it.

Q. Aside from the width, are they the same?—A. The construction is the same.

Q. As you hold it there is it in the exact condition as imported?—A. Yes, sir.

Q. Have you ever used merchandise like that?—A. No, sir.

Q. In your experience?—A. No, sir.

* * * * * * *

Q. Have you ever seen either the rake or the rake head represented by these two exhibits in use?—A. No, sir.

The sample rake was received as an exhibit in the case, and the issue was submitted upon the foregoing testimony, the exhibit, and the official record of the assessment.

It therefore appears that the articles in question were invoiced as "lawn rakes;" that they were found to be such by the collector; and that no denial of this title is made by the importer. The board also adopted this name for the articles in its decision.

We therefore conclude that the rakes in question are chiefly, if not exclusively, used for raking lawns, either to clear the same of leaves or other rubbish, or to gather up the cut grass left by a lawn mower. The appearance of the exhibit confirms this conclusion. Such rakes are not "agricultural implements" within the terms of paragraph 391, *supra*. This interpretation of that phrase follows from our

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recent decision in the case of United States *v.* Boker & Co. (6 Ct. Cust. Appls., —; T. D. 35472), wherein hedge shears were in question. The court, by Judge De Vries, then said:

> While, therefore, "agriculture" in its broad application may extend into and include elements of horticulture, viticulture, arbor culture, and other allied industries and pursuits, in its primary significance it extends to and embraces only those parts of all such as pertain to human and incidental animal subsistence—the substantial requirements of life (food) and possibly man's comfort (raiment), and not the mere pleasurable pursuits; the necessities and not the essentially pleasurable or ornamental.
>
> * * * * * * *
>
> The articles are so-called "hedge shears." Hedges are purely ornamental whether on the farm or about the city home. They do not contribute to the subsistence of man or beast directly or indirectly. Whether or not these so-called "hedge shears" are within paragraph 391 depends upon the evidentiary fact of whether or not they are chiefly used for trimming purely ornamental hedges and shrubbery or the subsistence productions of the agriculturist. This record affords us no evidence upon the subject, and the character of the instrument is not such as *per se* conveys any satisfactory evidence upon that point. In fact the limited and unsatisfactory light thus afforded would seem against the importers. We are for these reasons of the opinion that there was not sufficient, if any, evidence in the case justifying the reversal of the collector.

It is clear from the present record that the rakes now in question serve no purpose in the production of food from the soil, nor in the raising of domestic animals thereon. They are used as implements for the improvement of ornamental lawns only, and therefore fall directly within the terms of the foregoing decision.

In its decision of the present case the board stated that it but followed its former decision in Abstract 37178, wherein certain rake heads were held to be properly classifiable as agricultural implements under paragraph 391 of the act of 1913. Upon turning to that decision, however, we find that in that case "the proof offered clearly substantiates the claim of importers and shows the articles in question to consist of parts of rakes used exclusively for agricultural purposes and unquestionably within the provisions of said paragraph 391."

In the present case, however, no such proof appears, and the clear intendment of the present record is to the contrary. It need hardly be stated that the reference to the earlier decision made by the board in its present decision does not have the effect of bringing the former testimony into this case. Neither does that reference serve the office of a finding of fact in the present case, since the testimony upon which the former decision rested does not appear in the present record. United States *v.* Lun Chong & Co. (3 Ct. Cust. Appls., 468, 469; T. D. 33041).

The decision of the board is therefore reversed, and the collector's assessment is affirmed.

Reversed.

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(T. D. 36200.)

Human-hair tops.

Human-hair tops will continue to be assessed with duty at the rate of 15 per cent ad valorem under paragraph 385, tariff act of 1913, as a nonenumerated article, manufactured in whole or in part.

TREASURY DEPARTMENT, *February 29, 1916.*

SIR: The department duly received your letter of December 16, 1915, submitting a communication from the appraiser at your port relative to the classification of human-hair tops, attention being called to a decision of the Board of United States General Appraisers, Abstract 38842. In the decision in question the board overruled the claim of the importers that the merchandise was dutiable at the rate of 8 per cent ad valorem under paragraph 286 of the tariff act of 1913, without confirming the action of the collector in assessing duty on the merchandise at the rate of 15 per cent ad valorem as a nonenumerated manufactured article under paragraph 385 of the tariff act.

It appears that the human-hair tops in question are not suitable for any purpose other than to be reduced into a yarn and that they are in an intermediate state between the raw material and the yarn. It would appear, therefore, that they consist of human hair, manufactured. (Note T. D. 25710 and T. D. 30010 relative to ramie sliver, which was held not to be a manufacture of ramie, but ramie manufactured.)

Pending a judicial determination of the question of classification, therefore, you will continue to assess duty on human-hair tops at the rate of 15 per cent ad valorem under paragraph 385 of the tariff act of 1913 as a nonenumerated article manufactured in whole or in part.

Respectfully, ANDREW J. PETERS,
(88550.) *Assistant Secre'ary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36201.)

Metal crucifixes and religious medals.

Appeal directed from decisions of the Board of United States General Appraisers, Abstracts 39029, 39089, 39151, and 39175, involving the classification of certain metal crucifixes and religious medals.

TREASURY DEPARTMENT, *March 2, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 28th ultimo, relative to certain decisions of the Board of United States General Appraisers, Abstracts 39029, 39089, 39151, and 39175, wherein certain metal crucifixes and religious medals, which had been assessed with duty at the rate of 60 per cent ad valorem as articles

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of metal valued above 20 cents per dozen pieces, designed to be worn on apparel or carried on or about or attached to the person, under paragraph 356 of the tariff act of 1913, were held to be dutiable at the rate of 20 per cent ad valorem or 50 per cent ad valorem under paragraph 167 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decisions, in accordance with the provisions of subsection 29 of section 28 of the tariff act of 1909.

Respectfully, WM. P. MALBURN,
(93783.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36202.)

Drawback on metal articles.

Drawback on metal articles imported in the rough or partly finished condition and exported after having been finished by the Brown & Sharpe Manufacturing Co., of Providence, R. I.—T. D. 30348 of February 9, 1910, and T. D. 32552 of May 23, 1912, revoked.

TREASURY DEPARTMENT, *March 1, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on automobile gears, transmission cases, gauge blanks, and other articles of metal imported in a rough or partly finished condition and exported after having been finished by the Brown & Sharpe Manufacturing Co., of Providence, R. I.

A manufacturing record shall be kept, which will show, in the case of each lot of articles finished for exportation with benefit of drawback, the number, kind, value, and identity thereof, the manner in which finished, and the quantity and value of waste resulting. An abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed one imported rough or partly finished article for each finished article of like kind exported, the allowance to be reduced according to the value of the waste.

The sworn statement of the manufacturers, dated February 15, 1916, is transmitted herewith for filing in your office.

T. D. 30348 of February 9, 1910, and T. D. 32552 of May 23, 1912, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(92755.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Providence, R. I.*

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(T. D. 36203.)

Drawback on metals and metal articles.

Drawback on refined metals, metal alloys, and metal articles manufactured by Marks Lissberger & Son (Inc.), of Long Island City, N. Y., with the use of various kinds of imported metals.

TREASURY DEPARTMENT, *March 1, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on refined metals and metal alloys manufactured by Marks Lissberger & Son (Inc.), of Long Island City, N. Y., with the use of imported antimony, aluminum, lead bullion, scrap metals (such as lead, solder, white metal, tin, pewter, Babbitt metal, type metal, and aluminum), and with the use of antimony and lead produced from imported ores, covered by drawback rates now existing or which may be promulgated in the future, and on metal articles manufactured with the use of such refined metals or metal alloys.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated February 4, 1916, transmitted herewith, which will show, in the case of each lot of refined metals, metal alloy, and metal articles manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of each kind of duty-paid metal, and the quantity and kind of other metals used, the kind of article produced, the quantity thereof obtained, the quantity of imported metal of each kind appearing therein, and the quantities and values of dross, scrap, and any other forms of waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantities of imported materials of each kind appearing in the exported refined metal, metal alloys, or metal articles, with an addition to compensate for loss in manufacture, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

Respectfully, ANDREW J. PETERS,
(103766-9.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36204.)

Wireless apparatus for vessels.

Appeal directed from decision of the Board of United States General Appraisers of January 12, 1916, G. A. 7841 (T. D. 36078), involving the classification of certain wireless apparatus for vessels.

TREASURY DEPARTMENT, *February 11, 1916.*

SIR: The department acknowledges the receipt of your letter of the 5th instant relative to the decision of the Board of United States

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General Appraisers of January 12, 1916, G. A. 7841 (T. D. 36078), wherein the board held that certain wireless apparatus for vessels was not dutiable under paragraph 167 of the tariff act of 1913, but was free of duty under the provisions of subsections 5 and 6 of paragraph J of section 4 of that act.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(93000-12-1.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36205.)

Zinc dross.

Zinc dross derived abroad from American spelter is subject to duty at the rate of 10 per cent ad valorem under paragraph 154, tariff act of 1913, as a metal, unwrought, and not free of duty under paragraph 404 as American goods returned.

TREASURY DEPARTMENT, *March 2, 1916.*

SIR: The department duly received your letter of November 20, 1915, relative to the classification of zinc dross derived abroad from American spelter.

It appears that zinc dross is a commodity different from the spelter from which derived, with a different composition. The department therefore concurs in your opinion that the zinc dross in question is not entitled to free entry under paragraph 404 of the tariff act of 1913 as American goods returned, but that it is subject to duty at the rate of 10 per cent ad valorem under paragraph 154 of the said act as a metal, unwrought. (T. D. 34070.)

You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(104172.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36206.)

Tulip bulbs.

Tulip bulbs will continue to be assessed with duty at the rate of $1 per thousand under paragraph 210, tariff act of 1913.

TREASURY DEPARTMENT, *March 4, 1916.*

SIR: I have to call your attention to the decision of the United States Court of Customs Appeals of January 28, 1916 (T. D. 36146), in which certain tulip bulbs, which had been assessed with duty at

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the rate of $1 per thousand under the provision for "tulips" in paragraph 210 of the tariff act of 1913, were held by the court to be dutiable at the rate of 50 cents per thousand under the provision for "all other bulbs" in the same paragraph.

The Assistant Attorney General has advised the department that another case is being prepared before the Board of United States General Appraisers, in which it is expected to introduce further testimony on the question at issue.

Pending a judicial determination of the question, you will continue to assess duty on tulip bulbs at the rate of $1 per thousand under paragraph 210 of the tariff act of 1913.

Respectfully, ANDREW J. PETERS,
(98036.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36207.)

Drawback on auto-top cloth.

Drawback on auto-top cloth manufactured by the American Rubber Co., of Cambridge, Mass., and the Stoughton Rubber Co., of Stoughton, Mass., with the use of imported cloth for the account of H. Scherer & Co., of Detroit, Mich.—T. D. 31421 of March 23, 1911, revoked.

TREASURY DEPARTMENT, *March 4, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on auto-top cloth manufactured by the American Rubber Co., of Cambridge, Mass., and the Stoughton Rubber Co., of Stoughton, Mass., with the use of imported cloths for the account of H. Scherer & Co., of Detroit, Mich.

A manufacturing record shall be kept by each of the manufacturers in the manner described in their sworn statements, dated December 13, 1915, which will show, in the case of each lot of auto-top cloth manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity (length and width), character, value, and identity of the imported cloth and quantity and character of other cloth used, the quantity (length and width) of auto-top cloth produced, and the quantity, character, and value of the waste, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported cloth used in the manufacture of the exported auto-top cloth, as shown by the abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported cloth which the value of the waste will replace.

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The sworn statement of the American Rubber Co. and the Stoughton Rubber Co., above referred to, and the sworn statements of H. Scherer & Co., dated March, 22 1915, and January 27, 1916, are transmitted herewith for the files of your office.

T. D. 31421 of March 23, 1911, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(85566.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 36208.)

Drawback on wire rope.

Drawback on wire rope manufactured by the Broderick & Bascom Co., of St. Louis, Mo., with the use of imported wire.

TREASURY DEPARTMENT, *March 4, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on wire rope manufactured by the Broderick & Bascom Rope Co., of St. Louis, Mo., in whole or in part with the use of imported wire.

A manufacturing record shall be kept, which will show, in the case of each reel of wire rope manufactured for exportation with benefit of drawback, the serial number and date of manufacture thereof, the quantity, character, and identity of imported wire and the quantity of other materials used, the quantity (length, gauge, and weight) of wire rope produced, and the quantity of waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported wire used in the manufacture of the exported wire rope, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated January 31, 1916, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(103571-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *St. Louis, Mo.*

(T. D. 36209.)

Drawback on coco.

Drawback on sweetened coco powder manufactured by the Stephen L. Bartlett Co., of Boston, Mass., with the use of refined sugar produced from imported raw sugar and imported unsweetened powdered coco.—T. D. 22370 of July 20, 1900, T. D. 30258 of January 13, 1910, and T. D. 32015 of November 20, 1911, revoked.

TREASURY DEPARTMENT, *March 4, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(articles 855 to 881 of the Customs Regulations of 1915) on sweetened coco powder manufactured by the Stephen L. Bartlett Co., of Boston, Mass., with the use of refined sugar produced in whole or in part from imported raw sugar and imported unsweetened powdered coco, or with the use of such imported materials in combination with domestic coco.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated February 1, 1916, transmitted herewith, which will show, in the case of each lot of sweetened coco powder manufactured for exportation with benefit of drawback, the lot number, the date of manufacture and brand name thereof, and the quantities and identity of refined sugar and imported coco, and the quantity of domestic coco appearing therein A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of refined sugar and imported coco which may be taken as a basis for the allowance of drawback shall not exceed the quantities appearing in the exported sweetened coco powder, as shown by the abstract from the manufacturing record.

T. D. 22370 of July 20, 1900, T. D. 30258 of January 13, 1910, and T. D. 32015 of November 20, 1911, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(52918.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36210.)

Drawback on butter.

Drawback on manufactured butter produced by Lestrade Bros. (Inc.), of New York, N. Y., with the use of imported raw butter.

TREASURY DEPARTMENT, *March 4, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on imported butter produced by Lestrade Bros. (Inc.), of New York, N. Y., with the use of imported raw butter in combination with salt, coloring matter and other materials.

A manufacturing record shall be kept, which will show, in the case of each lot of manufactured butter produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity and identity of imported raw butter, and the quantities of other materials used, and the quantity of manufactured butter produced. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

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The allowance shall not exceed the quantity of imported raw butter appearing in the exported manufactured butter, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated January 28, 1916, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(100394-4.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36211.)

Drawback on crown corks.

Drawback on crown corks manufactured by L. Mundet & Son (Inc.), of Brooklyn, N. Y., with the use of imported cork disks.—T. D. 28264 of June 30, 1907, and T. D. 29581 of February 25, 1909, revoked.

TREASURY DEPARTMENT, *March 4, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (articles 855 to 881 of the Customs Regulations of 1915) on crown corks manufactured by L. Mundet & Son (Inc.), of Brooklyn, N. Y., with the use of imported cork disks.

The allowance shall not exceed one imported cork disk for each crown cork exported.

The sworn statement of the manufacturers, dated February 1, 1916, is transmitted herewith for filing in your office.

T. D. 28264 of June 30, 1907, and T. D. 29581 of February 25, 1909, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(46668.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36212.)

Plant quarantine act—Importation of cotton.

Collectors informed of the suspension by the Secretary of Agriculture of the taking effect of the regulations referred to in T. D. 36168.

TREASURY DEPARTMENT, *March 4, 1916.*

To collectors of customs:

Your attention is invited to the copy of plant quarantine decision No. 9, appended herewith, suspending the taking effect of regulation No. 7 of the rules and regulations governing the importation of

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cotton into the United States, as revised January 25, 1916, effective February 1, 1916, and modified by plant quarantine decision No. 8.

T. D. 36168 of February 15, 1916, is hereby amended accordingly.

(92655–19.) ANDREW J. PETERS, *Assistant Secretary.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
FEDERAL HORTICULTURAL BOARD.

PLANT QUARANTINE DECISION NO. 9.

The Federal Horticultural Board recommends that regulation No. 7 of the rules and regulations governing the importation of cotton into the United States, as revised January 25, 1916, effective February 1, 1916, and modified by plant quarantine decision No. 8, be suspended and that the same shall not go into effect until further order of the Secretary of Agriculture fixing a date when it shall become effective.

C. L. MARLATT, *Chairman.*
W. A. ORTON,
GEO. B. SUDWORTH,
W. D. HUNTER,
K. F. KELLERMAN,
Federal Horticultural Board.
R. C. ALTHOUSE,
Secretary to Board.

Approved:
D. F. HOUSTON,
Secretary of Agriculture.

WASHINGTON, D. C., *February 19, 1916.*

(T. D. 36213.)

Whistles.

Appeal directed from decision of the Board of United States General Appraisers of November 19, 1915, Abstract 38803, involving the classification of certain nickel-plated siren whistles.

TREASURY DEPARTMENT, *March 6, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 2d instant, inviting attention to the decision of the Board of United States General Appraisers of November 19, 1915, Abstract 38803, wherein certain nickel-plated siren whistles, which had been assessed with duty at the rate of 60 per cent ad valorem as articles valued over 20 cents per dozen pieces, designed to be worn on apparel or carried on or about or attached to the person, under paragraph 356 of the tariff act of 1913, were held by the board to be dutiable at the rate of 20 per cent ad valorem under paragraph 167 of the said act.

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It appears that the Government appealed for a rehearing in the case and that the board, under date of January 10, 1916, denied the petition for rehearing.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(101419.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36214.)

Cork disks and waste.

So-called cork waste, consisting of cork disks known as throw-outs, mixed with cork cuttings, broken disks, etc., dutiable on the proportion represented by the whole disks, as manufactured cork disks, at the rate of 12 or 15 cents per pound, according to thickness, under paragraph 340 of the tariff act of 1913, and the remaining portion of the merchandise free of duty under paragraph 464 of the said act.

TREASURY DEPARTMENT, *March 4, 1916.*

SIR: The department duly received your letter of the 24th ultimo relative to the classification of certain so-called cork waste, a sample of which is submitted.

It appears that the merchandise consists in part of cork disks, more or less imperfect and known as throw-outs, mixed with cork cuttings, broken disks, etc. In the sample submitted the proportion of disks is large, though it is stated that in some other importations there is only a small percentage of disks.

Cork clippings, etc., were held by the Court of Customs Appeals in T. D. 34939 to be free of duty under the provisions of paragraph 547 of the tariff act of 1909 for cork wood or cork bark unmanufactured. In that act there was no specific provision for either cork waste or cork disks as such.

In paragraph 464 of the present act, in addition to cork wood and cork bark, unmanufactured, "cork waste, shavings, and cork refuse of all kinds" are also provided for as free of duty, while "manufactured cork disks" are provided for as dutiable under paragraph 340.

As the result of a careful investigation of the matter it is found that disks similiar in character to the whole disks in the sample submitted can be used for the bottling of beers for quick consumption and for dry materials, and that many of them are equal or superior to certain grades manufactured in this country. The department is of the opinion, therefore, that they are commercial cork disks.

In view of the foregoing, on importations of the character in question made 30 days after the date hereof, you will assess duty on the

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proportion of the merchandise represented by the whole disks, as manufactured cork disks, at the rate of 12 or 15 cents per pound, according to whether or not over three-sixteenths of an inch in thickness, under paragraph 340 of the tariff act of 1913, passing the remaining portion of the merchandise free of duty as cork waste under paragraph 464 of the said act.

Respectfully, ANDREW J. PETERS,
(44102.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 36215.)

Order.

Hon. William P. Malburn, Assistant Secretary, to act temporarily in charge of customs.

TREASURY DEPARTMENT, *March 6, 1916.*

During the absence of Hon. Andrew J. Peters, Assistant Secretary in charge of customs, Hon. William P. Malburn will, in addition to his other duties, act as assistant secretary in charge of customs.

W. G. MCADOO,
Secretary of the Treasury.

(T. D. 36216—G. A. 7868.)

Axminster chenille carpeting.

Axminster chenille carpeting, 12 feet by 75 feet, imported in rolls, which rolls are cut after importation to meet the particular size demanded by the purchaser, are properly dutiable under paragraph 293, tariff act of 1913, as Axminster chenille carpeting and not under paragraph 300 as carpets woven whole for rooms—G. A. 421 (T. D. 10926) cited.

United States General Appraisers, New York, February 28, 1916.

In the matter of protest 781289 of Thos. Meadows & Co. against the assessment of duty by the collector o customs at the port of New York

[Reversed.]

Masters & Levett (*Benjamin A. Levett* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

BROWN, *General Appraiser:* The appraiser's report reads as follows:

The merchandise marked "A" consists of Axminster rugs woven in a single piece, the ends of which were turned back and permanently sewed and bound, making whole carpets. It was returned for duty as carpets, woven whole for rooms, at 50 per cent ad valorem under paragraph 300, act of 1913.

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Various claims are made in the protest, but reliance is placed upon the claim at 35 per cent under paragraph 293, reading:

293. Aubusson, Axminster, moquette, and chenille carpets, figured or plain, and all carpets or carpeting of like character or description, 35 per centum ad valorem.

The evidence shows that the merchandise here in question consists of a roll 12 feet by 75 feet of chenille Axminster carpeting, and that it is cut into lengths to suit the wishes of a particular purchaser. The evidence also shows conclusively that it was not woven whole for a particular room, that it is bound down at each end to prevent unraveling, and that it is manufactured by an entirely different process from the so-called true Axminster.

This article is not a rug. It is manufactured as a piece of carpeting in one piece on a loom, and the binding down of the two ends to prevent unraveling would not make it into a rug.

In the case of Johnson & Faulkner, G. A. 421 (T. D. 10926), it was held that the expression "woven whole for rooms" was intended to cover a carpet manufactured on special order to cover a particular room. This is not the case of the carpet here at issue.

For these reasons the merchandise in question is not within the purview of paragraph 300. It is therefore Axminster chenille carpeting within the meaning of paragraph 293, and the protest is sustained.

(T. D. 36217—G. A. 7869.)

Lawn mowers and turf-cutting machines not agricultural implements.

Lawn mowers and turf-cutting machines, specially designed for use in cutting grass and sod on golf courses, lawns, and in parks, are classifiable as manufactures of metal not specially provided for under paragraph 167, tariff act of 1913, rather than free of duty under paragraph 391 of said act as agricultural implements. Only such implements as are used in the cultivation and growth of crops which supply food and clothing for man are agricultural implements within the meaning of paragraph 391, as judicially interpreted by the United States Court of Customs Appeals in United States *v.* Boker (6 Ct. Cust. Appls., —; T. D. 35472).

United States General Appraisers, New York, February 28, 1916.

In the matter of protests 792704, etc., of C. H. Langley against the assessment of duty by the collector of customs at the port of Boston.

[Affirmed.]

Searle & Waterhouse (*Wm. E. Waterhouse* of counsel) for the importer.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

FISCHER, *General Appraiser:* Certain lawn mowers and turf-cutting machines were classified by the collector as manufactures of metal

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not specially provided for, and duty was collected thereon at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913. The importers claim that said articles are properly dutiable under paragraph 385 of said act as nonenumerated manufactures, or, if not so dutiable, that they are correctly classifiable as agricultural implements, and accordingly entitled to free entry under the following paragraph of said act:

391. Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators, thrashing machines, cotton gins, machinery for use in the manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts.

Inasmuch as the articles in question are shown to be composed of metal, there can possibly be no merit in the contention that they are classifiable under paragraph 385 as nonenumerated manufactures. That claim is therefore summarily overruled.

The only question, then, which is here worthy of consideration is, Are these mowers and turf cutters agricultural implements within the meaning of paragraph 391?

The testimony, which is not disputed, shows that the mowers are designed principally for use in cutting grass on golf courses, although they are to a great extent similarly employed on lawns and in parks; that the item invoiced as one "Pattissons' turf-cutting machine" is representative of a class of articles also used by golf clubs for the purpose of stripping the turf and for removing the sod on golf courses; that for this purpose it is supplied with a knife which slides underneath and reaches back of the turf; and that in its operation the machine rolls on a big roller. The witness further testified that the only people to whom his company has sold any of these machines were golf clubs.

No effort was made toward proving that these articles, or either of them, were known and recognized in the trade and commerce of this country as agricultural implements, nor was any attempt made to show that they were included within that general category by virtue of being chiefly used as such. Some testimony, however, was presented with a view to showing that in some instances the clippings from the golf greens were raked and gathered into compost heaps and afterwards used as fertilizer in gardens maintained by some golf clubs, but that as a general rule such heaps were employed to help improve the condition of the golf greens; that it was also a common practice to allow these clippings to remain unraked on the greens and lawns, except where the cut was a heavy one, in which

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event the clippings were raked off and composted and then returned to the green in the form of fertilizer.

However, we do not consider this testimony as having any material bearing upon the sole question here at issue, which, as before stated, is, Are these articles agricultural implements as that term is used in paragraph 391?

The United States Court of Customs Appeals, in a comparatively recent decision, has judicially interpreted the provisions of said paragraph, and has enunciated a clear and definite rule to be applied to any article which may be claimed to be entitled to free entry thereunder on the ground that it is an agricultural implement. The case referred to is that of United States *v.* Boker (6 Ct. Cust. Appls., —; T. D. 35472), and the merchandise, the classification of which was therein determined by the court, consisted of hedge shears which were specially designed and employed solely for use in trimming hedges and the like.

In its decision in that case the court, after quoting at length various dictionary definitions of the word "agriculture," proceeded to interpret the intent of Congress as expressed in the language of paragraph 391 and to indicate precisely the nature and character of the articles intended to be covered by the term "agricultural implements" as there used. Speaking through Judge De Vries, the court said:

> While, therefore, "agriculture" in its broad application may extend into and include elements of horticulture, viticulture, arboriculture, and other *allied* industries and pursuits, in its primary significance it extends to and embraces only those parts of all such as pertain to human and incidental animal subsistence—the substantial requirements of life (food) and possibly man's comfort (raiment), and not the merely pleasurable pursuits; the necessities and not the essentially pleasurable or ornamental.

It requires no reasoning to show that the present merchandise, which is specially designed for and almost exclusively employed in connection with the upkeep and maintenance of golf courses, can in no sense be claimed to even remotely contribute toward the raising of crops which supply food or clothing for man. On the contrary, it is too clear that these mowers and turf cutters, like the hedge shears in the Boker case, *supra*, are precisely within the category of articles which the court held were not agricultural implements within the congressional meaning of that term, for the reason that they perform operations the results of which contribute merely to the pleasure and to the aesthetic tastes of man. Far from being agricultural implements, the testimony shows that their chief use is in keeping in good condition golf greens, thus adding to the pleasure and enjoyment of the devotees of the game of golf.

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But counsel for the importers in an attempt to bring these mowers within the purview of paragraph 391, invite attention to the fact that "mowers" are specifically and by name mentioned in said paragraph, and they maintain that this specific enumeration must necessarily control the classification of these articles.

With this contention we can not agree, for the simple reason that the term "mowers" as used in said paragraph plainly comprehends a well-defined and definitely understood class of articles which are well-known agricultural implements and which are wholly *ejusdem generis* with plows, harrows, headers, harvesters, reapers, agricultural drills and planters, horse rakes, cultivators, and thrashing machines, all of which are specifically provided for by name in said paragraph. As used by Congress, the term "mowers" is evidently intended to include large mowers and mowing machines of the type which are usually drawn by horse or other power, and which are used for cutting grain, wheat, rye, etc., in the fields. It certainly does not include lawn mowers, which are employed for cutting grass on lawns and on golf courses.

Moreover, it will be noted that the words "agricultural implements," which appear as the general title or initial specification to the present paragraph 391, were not present in its immediate predecessor, paragraph 476 of the act of 1909. These words, we believe, were deliberately inserted by Congress in the present act for the sole purpose of indicating precisely the nature and character of the articles which the lawmakers intended should be embraced within the meaning thereof, and the well-known and prescribed use of the list of articles which immediately follow the title words is plainly indicative of the fact that the words "agricultural implements" were not intended to be construed in their broadest significance, but rather confined to the primary meaning thereof. This is aptly pointed out by the court in the Boker case in the following paragraph quoted from the decision therein:

> The language of paragraph 391 illustrates and confirms this view. Thus, while "wagons and carts" are within the paragraph—such as are used in the cultivation and removal of the crops by the farmer—certainly those words would not include buggies or automobiles—pleasure vehicles—nor would they extend to the wagon or cart of the contractor entirely unused upon the farm. There is no implement enumerated within the paragraph that is not devoted to the production of food or raiment for man, and there is none so enumerated that is employed in his other pursuits.

For the reason that the articles in question are not agricultural implements and therefore not entitled to free entry, we hereby overrule the protests and affirm the decision of the collector in each instance.

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(T. D. 36218—G. A. 7870.)

Oils.

Oils, which are not fish oils, and not chemically compounded, commonly used for stuffing and dressing leather, are entitled to free entry under paragraph 498 of the tariff act of 1913.—G. A. 6084 (T. D. 26539) and Abstract 6179 (T. D. 26312) distinguished.—G. A. 7812 (T. D. 35895) and Abstract 38965 cited.

United States General Appraisers, New York, March 1, 1916.

In the matter of protests 731734, etc., of Stone & Downer Co. against the assessment of duty by the collector of customs at the port of Boston.

[Reversed.]

Searle & Waterhouse (*Wm. E. Waterhouse* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Frank P. Wilson*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

McClelland, *General Appraiser:* The invoice descriptions and the returns for advisory classification by the appraiser on the oils in issue are variously noted on the invoices as follows:

Protests 731734–5, No. "1308 leather oil," returned as "recovered oil" and assessed with duty at the rate of 15 per cent ad valorem under paragraph 45.

Protest 734112, "clear oil," returned as "rendered oil" and assessed with duty at the rate of 15 per cent ad valorem under paragraph 45.

Protest 744344, "leather dressing oil," returned as "rendered oil" and assessed with duty at the rate of 15 per cent under paragraph 44.

Protests 749545–6, No. "1212 red oil," No. "1308 leather dressing oil," returned as "rendered oil," and "superior clear oil" and "cholestrine oil," returned as "animal oil" and assessed with duty at 15 per cent under paragraph 44.

Protest 765496, "cholestrine oil" and "superior clear oil," returned as "rendered oil" and assessed at 15 per cent under paragraph 44.

Protest 772320, "clear oil" and "leather oil," returned as "rendered animal oil" and assessed at 15 per cent under paragraph 44.

Protest 783596, No. "1212 leather oil" and No. "1308 leather oil," returned as "distilled oil" and assessed with duty at the rate of 20 per cent under paragraph 46, tariff act of 1913.

The collector assessed duties in accordance with the appraiser's returns and against each of the collector's decisions protest is made, claiming that the oils in question should have been admitted to free entry under paragraph 498 of the tariff act of 1913.

In addition to the testimony taken on the hearing at the port of Boston we have the testimony, taken under two commissions, of Philip John Meyer, managing director of the company in England which produced the oils, and the records in protest 108900, covered by G. A. 6084 (T. D. 26539), and protest 123683, covered by Abstract 6179 (T. D. 26312).

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Considerable effort seems to have been made by the Government to trace the sources of these oils and the processes by which they were produced. The degree of success that attended this effort is, in our view, immaterial so long as it does not appear that they are fish oils or other oils chemically compounded.

Paragraph 498, under which claim is made, reads as follows:

498. Grease, fats, vegetable tallow, and oils (excepting fish oils), not chemically compounded, such as are commonly used in soap making or in wire drawing, or for stuffing or dressing leather, not specially provided for in this section.

Whereas the paragraph (tariff act of 1897) under which the two decisions above enumerated were made reads as follows:

568. Grease, and oils (excepting fish oils), such as are commonly used in soap making or in wire drawing, or for stuffing or dressing leather, and which are fit only for such uses, and not specially provided for in this act.

In the tariff revision of 1909, paragraph 568, *supra*, was reenacted without change, but in the revision of 1913 the words "and which are fit only for such uses" were omitted from paragraph 498, so that the question now to be decided is very different from that which had to be determined in G. A. 6084 and Abstract 6179, *supra*, which were adverse to the importers. In omitting these words Congress evidenced an intent to permit a more liberal use of the greases and oils provided for in the revised paragraph. G. A. 7698 (T. D. 35221), G. A. 7812 (T. D. 35894), and Abstract 38965.

It is no longer necessary that oils shall be "fit only" for one or more of the uses prescribed in paragraph 498 in order to entitle them to free entry. It is enough if they are *commonly used* for one or more of the purposes therein named regardless of whether they are capable of or are actually used for other purposes.

We are unable to say from the record whether all of these oils are of the same origin or whether they are the result of the same processes of manufacture, but that is not material to the issue, since the evidence is sufficient to show that they are commonly used for stuffing and dressing leather. To sustain the claim for free entry in each of these cases does not mean conflict with the decisions above cited, since they were made and promulgated under an altogether different statute.

The protests are sustained and the decision of the collector is reversed in each case.

(T. D. 36219—G. A. 7871.)

Commissions.

In adding back to the invoice value of certain willow baskets imported from Austria the sum of 394.02 crowns previously deducted by the importers on entry, the appraiser acted fully within his statutory rights and powers, particularly when his

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written notation opposite said item on the invoice positively shows that the sole motive which actuated him in making the advance was "to make market value."

The importers' appeal from such appraisement presents but one question, viz, what is the true market value of the goods? In declining to proceed and find such value the single general appraiser and the board both committed error and the importers were thereby deprived of their lawful right to have their goods reappraised and re-reappraised. Inasmuch, however, as the importers have failed to allege this claim in their protest, no relief in that particular can here be granted.

A seller's profit unquestionably constitutes part of the market value of the goods.

United States General Appraisers, New York, March 1, 1916.

In the matter of protest 767725 of John D. Gluck & Son against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Masters & Levett (*M. Ohlbaum* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

FISCHER, *General Appraiser:* This is a protest against the action of the collector of customs at the port of New York in levying an additional or penal duty of 11 per cent on certain willow baskets imported from Austria. The facts are stated in the following report of the collector transmitting the papers in the case to this board:

The within described goods were sold by Joseph Loewenthal, of Moskovitz, Austria, to A. Hauptmann, of New York, who declared the foreign market value to be 4,346.92 crowns less 805.49 crowns, or 3,541.43 crowns net. To equal the foreign *per se* market value the appraiser disallowed the deduction of 394.02 crowns described as commission, thereby increasing the unit *per se* value by 10 per cent. From the value as appraised the importers appealed under paragraph M of section 3, act of 1913, to a general appraiser, who dismissed the appeal. A further appeal to a board of three general appraisers was rejected and returned without action, as no reappraisement was held.

Duty was accordingly assessed on the foreign *per se* value as appraised, at 25 per cent under paragraph 175 of the tariff, and, as the appraised *per se* value exceeded the entered unit by 11 per cent, an additional duty was also taken of 1 per cent for each per cent of advance as provided for in paragraph I of section 3.

The contentions of the importers, as set forth in their protest filed with the collector, are as follows:

We claim that in the assessment of duty you have exacted excessive duties and penalties by including in the alleged dutiable value of said merchandise an item of commission, which commission we claim is not dutiable.

We further claim that, if said commission be dutiable, you have illegally assessed penal or additional duties, in that said commission is not part of the market value, and that the appraiser, the general appraiser, and the Board of General Appraisers exceeded their jurisdiction in adding said commission to the value of the goods; that the addition of said commission, if dutiable, was a function of the collector and not of the appraiser or general appraisers, and that therefore no penalty can be lawfully assessed for undervaluation.

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We also protest against the payment of all duties not legally chargeable upon said importation, and pay the amount exacted under duress and compulsion, to obtain and retain peaceable possession of the goods, holding you and the Government responsible for its return.

In declining to accept jurisdiction of the appeal to reappraisement, the single general appraiser stated his reasons in the following memorandum, which forms part of the record before us:

The appraiser's addition appealed against is in the form of disallowance of a 10 per cent commission, amounting to 394.02 crowns. This is not an advance in the *per se* value of the merchandise, and, under United States *v.* Spingarn (T. D. 34002), a charge for commission is not, under the statute, a subject for appraisement. The appeal must be and is dismissed.

And the board, in likewise summarily dismissing the further appeal of the importers to re-reappraisement for alleged lack of jurisdiction, said:

The general appraiser not having reappraised the merchandise, the importer could not, under the statute, invoke the re-reappraisement by the board. Hence returned without action.

From the mere statement of the issue as here joined it is at once clearly obvious that, irrespective of any probable merit the protest may be said to possess in so far as it alleges that the local appraiser exceeded his jurisdiction in adding to the invoice value of the goods the item of 394.02 crowns, no merit whatever can possibly attach to such a contention made with respect to the action taken herein by the general appraiser and the board, since it is altogether too manifestly evident from the face of the papers that not only did the general appraiser and the board make absolutely no additions to the invoice value or other value of the goods but, on the contrary, that they positively declined to even entertain any jurisdiction at all of the subject matter involved in either of the respective appeals of the importers to reappraisement or re-reappraisement. It follows, therefore, that it would be a rather difficult proposition for them to have exceeded a jurisdiction of which they had never even availed themselves.

No less erroneous, in our judgment, is the further contention of the importers that the local appraiser exceeded his jurisdiction herein. On the contrary, we find it to be conclusively shown by the undisputed statement contained in the notation of the local appraiser—supported by the legal presumption of correctness which ordinarily attaches to the official acts of Government officers—that he proceeded on the theory that it was necessary, in order to make up the sum which he found to be the market value of the goods, to add to the invoice *per se* value thereof the sum of 394.02 crowns. The fact that this particular item happened to be described on the invoice as a commission has no bearing whatever on the action of the appraiser,

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especially since it is so clearly stated by the appraiser that the only purpose which controlled his action in the matter was to make market value.

In Wanamaker *v.* Cooper (69 Fed., 329) it was held that—

> * * * It must be assumed that the discounts which were "disallowed" by him (the appraiser) were not arbitrarily rejected, but were taken as the measure of the "advance" which he deemed it his duty to make in appraising "the true and actual market value * * * of the merchandise." This understanding of the appraiser's official action reconciles it with the law. There is, at least, no evidence that he intended to exceed his powers, and the presumption is that he did not.

The position herein taken by the Government, as stated in the brief filed in its behalf, is that the protest should be overruled, first, because the issues involved are properly subjects for reappraisement proceedings and not of protest; secondly, because both the single general appraiser and the board erred in not accepting jurisdiction of the importers' appeals to reappraisement and re-reappraisement, respectively, at least to the extent of ascertaining and determining the true market value of the merchandise, when that matter was properly before them; and, thirdly, because the proof introduced at the time of the hearing herein conclusively establishes as a fact that the particular item in dispute is not a commission, as described on the invoice, but represents rather a purchaser's profit, and hence properly forms part of the market value of the merchandise, as found by the local appraiser.

With these several contentions of the Government we fully agree. Indeed, all of the circumstances leading up to the filing of the protest, as well as the testimony offered herein by the importers, tend to make such conclusion on our part inevitable.

The action of the local appraiser in noting opposite the item of 394.02 crowns the words "appraiser advances to make market value by disallowing deduction of," in effect and in substance operated to advance the *per se* value of the merchandise by precisely that amount. And the importers' exception to such action, as embodied in their appeal to reappraisement on "all items advanced," brought squarely before the single general appraiser the exercise of the sole function imposed upon him by law, to wit, of finding the market value of imported merchandise.

Paragraph M of section 3 of the present tariff provides, among other things, that—

> * * * In such cases the general appraiser and boards of general appraisers shall proceed by all reasonable ways and means in their power to ascertain, estimate, and determine the dutiable value of the imported merchandise, and in so doing may exercise both judicial and inquisitorial functions. In such cases the general appraisers and the boards of general appraisers shall give reasonable notice to the importer and the proper representative of the Government of the time and place of each and every

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hearing at which the parties or their attorneys shall have opportunity to introduce evidence and to hear and cross-examine the witnesses for the other party and to inspect all samples and all documentary evidence or other papers offered.

Apparently, the only question presented to the single general appraiser was, What was the market value of the goods? The determination of that question necessarily involved a review of the appraisement made by the local appraiser and his action in deciding that, to make market value, it was necessary to add back to the *per se* value of the goods the 394.02 crowns which had been deducted therefrom by the importers on the ground that it was a commission and hence, in their judgment, a nondutiable item.

The single general appraiser, however, concluded that he had no jurisdiction of the matter because "the appraiser's addition appealed from is in the form of disallowance of a 10 per cent commission amounting to 394.02 crowns," and, further, as stated in his memorandum of dismissal, because "this is not an advance in the *per se* value of the merchandise, and, under United States *v.* Spingarn (T. D. 34002), a charge for commission is not, under the statute, a subject for appraisement."

In so far as we have been able to discover from the record before us, the importers had offered no testimony, nor were they apparently afforded an opportunity of submitting any evidence, which might have tended to establish that the invoice *per se* value of the goods represented, as matter of fact, the true, open-market value thereof; and that the item of 394.02 crowns was in fact, what it was represented to be on the invoice, a bona fide commission which had been paid to a commissionaire or agent for services in securing, packing, and shipping the goods, and, under the statute, a nondutiable charge.

The notation made by the appraiser on the invoice opposite the item here in dispute was partly made with the aid of a rubber stamp. The stamped impression of the words "appraiser advances to make market value" as it appears on the invoice is only readable on close inspection, due, in all likelihood, to the scarcity of ink on the stamp; but the words "by disallowing deduction of," which immediately follow those produced by the rubber stamp, were written in red ink and stand out clearly and distinctly. It may well be that the general appraiser had failed to observe the very faint impression produced by the rubber stamp and had only noted the written words opposite the item of 394.02 crowns. This circumstance might have led him to believe that the action of the local appraiser was somewhat arbitrary in that it did not plainly appear on the invoice just what motive had actuated him in disallowing an item clearly designated thereon as a commission.

Be that as it may, these indisputable facts are apparent from the record:

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(1) The local appraiser, acting fully within his legal rights and powers, added to the *per se* value of the goods the sum of 394.02 crowns to make market value.

(2) The importers, also acting within their full and statutory rights, duly appealed from the action of the appraiser to the only tribunal under the law authorized to entertain such an appeal, to wit, the Board of General Appraisers.

(3) That the single general appraiser duly designated to hear and determine the question involved in said appeal declined to accept jurisdiction thereof, and that the board on re-reappraisement similarly declined to act because there had been no reappraisement of the goods.

Inasmuch, however, as the protest now before us does not claim that the importers were denied any legal rights in the matter, we are not here called upon to indicate what remedy should be applied to those conditions if that claim were alleged in the protest.

The only testimony submitted in the case before us is that of the importer himself, and in effect shows that he bought the merchandise directly from the shipper, who in turn purchased it with his own money from several different sources, all too small and insignificant to constitute anything like a market therefor. The witness further testified that, so far as he knows, the shipper represented the market for the goods. This statement would seem to be corroborated by the shipper's own description of himself on the invoice as the seller. Having, therefore, purchased the goods with his own money, it is too clear that anything over and above the cost of the goods represented the shipper's profit, not his commission.

The market value contemplated by the statute is the price at which the sellers freely offer the goods in usual wholesale quantities to all persons, a price which necessarily includes the seller's profit. The admitted fact that the shipper bought the goods with his own money demonstrates conclusively that absolute title to the goods became vested in him, and in any subsequent transaction involving the sale of the goods his status in law is plainly fixed as that of owner and seller, not as commissionaire or agent.

This case would seem to be governed by the ruling of the United States Court of Customs Appeals in United States *v.* Van Ingen (5 Ct. Cust. Appls., 432; T. D. 34970, which affirmed the board's ruling in Abstract 34066; T. D. 33872). In that case the court said:

> The expense in question having been incurred prior to the date at which the market value is to be found by the appraiser, the item, if dutiable, must be deemed to have entered into the cost of the merchandise to the importer, and it is to be presumed that it entered into consideration of the general appraiser in determining its market value.

In view of the fact that it is here shown that the item of 394.02 crowns represented a profit and not a commission, it was properly

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held dutiable by the collector as part of the market value of the goods.

The protest is therefore overruled and the decision of the collector is affirmed.

(T. D. 36220—G. A. 7872.)

Chemical compounds in glass bottles.

Various chemical and medicinal compounds put up in glass bottles and weighing less than 2½ pounds gross weight are properly classified under paragraph 17, act of 1913. at 20 per cent, and paragraph 83, which refers to glass bottles containing articles which are not taxed at an ad valorem rate, has no application here.

United States General Appraisers, New York, March 1, 1916.

In the matter of protest 759614 of Merck & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Walden & Webster for the importers.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty* and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* The merchandise is reported by the appraiser to consist of chemical compounds put up in glass bottles containing less than 2½ pounds gross weight. It was classified under the provisions in paragraph 17, act of 1913, reading:

Chemical and medicinal compounds, combinations and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of two and one-half pounds or less gross weight * * * shall be dutiable at a rate not less than 20 per centum ad valorem.

The protest claims that the merchandise is dutiable at 15 per cent under paragraph 5 as chemical compounds.

The case was submitted on the following stipulation:

It is hereby stipulated and agreed by and between the parties hereto that the items described on the invoices covered by the above protest as follows: Manganese. albuminated; strontium thiosulphate; aldehyde ammonia; sodium nitrite. pure sticks; hyoscine; extr. supravenalis glands; hydrastinine hydrochlor; molybdenum oxide; pelletierine tannate; allyl sulphide; potass. fluoresceinate; reagt. cobalt nitrate; potass. pyrosulphate; reagt. potass. iodate—are chemical or medicinal compounds and are contained in plain glass bottles of the kind ordinarily used as containers, and that the gross weight of each bottle with its contents is 2½ pounds or less.

Counsel for the protestants contends that the word "packages" in paragraph 17 does not include glass bottles "because Congress has, through many tariff acts, treated glass bottles as a special class of containers, and continues to so treat them in this law (par. 83)."

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While it is true that Congress has treated glass bottles as a special class of containers, it does not follow that glass bottles could not properly be described as "packages." In fact, they are a special kind of package or container and have been treated as such. Yet certain kinds of glass bottles are still treated in the same class as other packages, because in paragraph R of section 3 Congress provides that the actual market value shall include the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids. Thus glass bottles (referred to in the parenthetical exception to par. 83) are treated like any of the other packages or covers referred to in said paragraph R. This is the construction placed upon similar language in the act of 1909 by the Court of Customs Appeals in United States *v.* Conkey (3 Ct. Cust. Appls., 245; T. D. 32564), and clearly precludes the application of paragraph 83 in this case.

Counsel for the protestants also contends that even if glass bottles are packages within paragraph 17, they are more specifically provided for in paragraph 83, because paragraph 83 and paragraph 5 must be read together as one provision and constitutes a provision for chemical and medicinal compounds in bottles, which controls over the provision in paragraph 17 for chemical and medicinal compounds in packages of less than 2½ pounds.

This argument is clearly inapplicable to the provisions of paragraph 17, which provides a minimum rate of duty on various articles when they are packed in containers of a specified weight, though if otherwise packed they would be dutiable under other provisions of the tariff act. If it were not for the provisions of paragraph 17, these goods would be dutiable under paragraph 5 as chemical or medicinal compounds at 15 per cent ad valorem, the exception in paragraph 83 would prevent the application of said paragraph, and the goods (including the bottles containing them) would pay 15 per cent under paragraph 5. Consequently, considering paragraph 17, when the size of the package brings the merchandise under the minimum rate of 20 per cent ad valorem provided therein, the legal situation is not changed, and paragraph 83, by reason of the exception therein, is still inapplicable.

In Abstract 37927, June 17, 1915, Haarlem oil in bottles of less than 2½ pounds in weight was held to be within paragraph 17 of the act of 1913, for the reason that the small bottle is the "individual" package contemplated by the language of paragraph 17, not the larger packages containing 12 or more of the bottles.

We therefore hold that the goods in question, including the bottles containing them, are properly classified under paragraph 17.

The protest is overruled.

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Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, FEBRUARY 28, 1916.

No. 39291.—Protest 781698 of McLaughlin-Gormley-King Co. (Minneapolis).

GENTIAN ROOT.—Crude gentian root classified at one-fourth of 1 per cent per pound under paragraph 39, tariff act of 1913, is claimed free of duty as a crude drug under paragraph 477.

Opinion by BROWN, G. A. The provision for gentian in paragraph 39 was held to cover both leaves and roots. Protest overruled.

No. 39292.—Protests 783125, etc., of National Aniline & Chemical Co. et al. (New York).

OXIDE OF ZINC.—Oxide of zinc put up in packages of less than 2½ pounds gross weight, classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable as oxide of zinc at 10 per cent under paragraph 61.

Opinion by BROWN, G. A. On the authority of Abstract 38968 the merchandise was held properly classified under paragraph 17.

No. 39293.—Protests 785041, etc., of Thomas Nevin (New York).

VACCINE VIRUS—SERUMS.—Vaccine virus and other serums put up in ampoules, classified under the provision for medicinal or similar substances in paragraph 17, tariff act of 1913, at 25 per cent ad valorem, is claimed free of duty under paragraph 400 relating to antitoxins, vaccine virus, and other serums.

Opinion by BROWN, G. A. The merchandise was held properly classified under paragraph 17. Abstract 37925 followed.

No. 39294.—Protest 787735-6304 of Charlin Drug Co. (New Orleans).

ICHTHYOL—ICHTOSAN.—Merchandise classified as a chemical or medicinal compound at 15 per cent ad valorem under paragraph 5, tariff act of 1913, is claimed to be ichthyol, free of duty under paragraph 561.

Opinion by BROWN, G. A. Upon the report of the appraiser, admitting that the merchandise is entitled to free entry under paragraph 561, the protest was sustained. Cassett *v.* United States (2 Ct. Cust. Appls., 465; T. D. 32225) followed.

No. 39295.—Protest 791681 of Wm. H. Stiner & Son (New York).

DISINFECTANT—COAL-TAR PREPARATION.—Merchandise invoiced as disinfecting fluid, reported by the appraiser to consist of an alkaline solution of soap and coal tar used as a general disinfectant, classified as a coal-tar preparation at 15 per cent ad valorem under paragraph 21, tariff act of 1913, is claimed free of duty as sheep dip under paragraph 596.

Opinion by BROWN, G. A. Protest unsupported; overruled.

No. 39296.—Protest 763672 of Anglo-American Incandescent Light Co. (Pittsburgh).

MANGANITE—CHEMICAL COMPOUND.—Merchandise invoiced as manganite and classified as a chemical compound at 15 per cent ad valorem under paragraph 5, tariff act of 1913, is claimed free of duty under paragraph 540 as oxide of manganese.

Opinion by BROWN, G. A. Protest unsupported; overruled.

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No. 39297.—Protest 773330 of Import Chemical Co. (New York).

SULPHATE OF STRONTIA.—Merchandise reported by the appraiser to consist of sulphate of strontia or salt of strontia, classified as a chemical salt at 15 per cent ad valorem under paragraph 5, tariff act of 1913, is claimed free of duty as strontia under paragraph 615.

Opinion by BROWN, G. A. Protest unsupported; overruled.

No. 39298.—Protests 759587, etc., of Thurston & Braidich (New York).

CRUDE GUM—GUM ARABIC.—Merchandise classified as gum arabic at one-half of 1 cent per pound under paragraph 36, tariff act of 1913, is claimed free of duty as crude gum under paragraph 477.

Opinion by BROWN, G. A. Upon stipulation of counsel that the merchandise is similar to the crude gum passed upon in Abstract 38356 it was held free of duty under paragraph 477.

No. 39299.—Protests 752510, etc., of Heller & Merz Co. et al. (New York).

PHTHALIC ACID ANHYDRIDE.—Phthalic acid anhydride classified at 15 per cent ad valorem under paragraph 1, tariff act of 1913, is claimed free of duty under paragraph 387.

Opinion by BROWN, G. A. Upon stipulation of counsel the merchandise was held entitled to free entry as phthalic acid under paragraph 387. G. A. 7819 (T. D. 35914) followed.

No. 39300.—Protest 766312 of American Express Co. (New York).

AROMATIC SUBSTANCES.—This protest is against the classification of alcoholic perfumery and toilet articles at 60 per cent ad valorem under paragraph 48, tariff act of 1913, and aromatic substances at 20 per cent under paragraph 49.

Opinion by BROWN, G. A. Protest unsupported; overruled.

No. 39301.—Protests 765656, etc., of McKesson & Robbins et al. (New York).

AROMATIC SUBSTANCES—CRUDE DRUGS.—Merchandise reported by the appraiser to consist of dried rose leaves, flowers, roses, buds, and petals, classified as aromatic substances used in the manufacture of perfumery, at 20 per cent ad valorem under paragraph 49, tariff act of 1913, is claimed free of duty as crude drugs under paragraph 477.

Opinion by BROWN, G. A. Protests unsupported; overruled.

No. 39302.—Protest 786267 of Sigmund Ullman & Co. (New York).

PRUSSIAN BLUE.—The appraiser reported the merchandise in question to consist of Prussian blue containing ferrocyanide of iron. It was classified at 20 per cent ad valorem under paragraph 52, tariff act of 1913, and is claimed dutiable as ultramarine blue at 15 per cent under the same paragraph or as a coal-tar product under paragraph 21.

Opinion by BROWN, G. A. Protest unsupported; overruled.

No. 39303.—Protest 789729 of Pascal, Dubedat & Co. (San Francisco).

WASH BLUE.—Wash blue containing ultramarine, classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 52.

Opinion by BROWN, G. A. On the authority of Abstracts 38629 and 38840 the wash blue in question was held dutiable under paragraph 17, as claimed.

No. 39304.—Protests 790152, etc., of Thos. Meadows & Co. (New York).

FLANNELS.—Flannels classified at 35 per cent ad valorem under paragraph 290, tariff act of 1913, are claimed dutiable at 25 or 30 per cent under paragraph 289.

Opinion by BROWN, G. A. Upon stipulation of counsel that the merchandise is of the same character as that passed upon in G. A. 7772 (T. D. 35703), it was held dutiable as flannels under paragraph 289, as claimed.

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No. 39305.—Protests 788231, etc., of A. H. Riley et al. (Portland, Me.).

FISH PARTLY BONED.—Split salt cod with one-half or more of the backbone removed classified as fish, boned, at three-fourths of 1 cent per pound under paragraph 216, tariff act of 1913, is claimed free of duty as fish not otherwise specially provided for, under paragraph 483.

Opinion by BROWN, G. A. On the authority of Woodward *v.* United States (6 Ct. Cust. Appls., —; T. D. 35918), the fish in question was held free of duty under paragraph 483, as claimed.

No. 39306.—Protest 788415 of Scandinavian Importing Co. (Boston).

FISH, SKINNED OR BONED.—Merchandise classified as fish in tins at 15 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable as fish, skinned or boned, at three-fourths of 1 cent per pound under the last clause of the same paragraph.

Opinion by BROWN, G. A. Protest submitted without evidence; overruled Tokstad-Burger Co. *v.* United States (6 Ct. Cust. Appls., —; T. D. 35981) noted.

No. 39307.—Protests 686720, etc., of P. Pastene & Co. et al. (Boston, etc.), and protests 708386, etc., of J. Franquez & Co. et al. (New York).

FISH IN TINS.—Merchandise classified as fish in oil and fish in tins under paragraph 270, tariff act of 1909, is claimed dutiable under paragraphs 272 and 273.

Opinions by BROWN, G. A. Protests unsupported; overruled.

BEFORE BOARD 2, FEBRUARY 28, 1916.

No. 39308.—Protests 792671, etc., of Leigh & Butler (Boston).

CARD CLOTHING GRINDING MACHINES—MACHINE TOOLS.—Dronsfield patent traverse wheel grinders, adapted and designed for grinding card clothing, classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as machine tools at 15 per cent under paragraph 165.

Opinion by FISCHER, G. A. The grinders in question were held dutiable as machine tools under paragraph 165, as claimed. Abstract 38981 followed.

No. 39309.—Protests 757244, etc., of Harry Angelo Co. et al. (New York).

FIGURED COTTON CLOTH—TABLE DAMASK—QUILTS.—Woven figured cotton cloth, cotton quilts, blankets, and towels, and cotton table damask, classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, and cotton Turkish towels classified as pile fabrics at 40 per cent under paragraph 257, are claimed dutiable under paragraphs 252 and 264 or 263.

Opinion by COOPER, G. A. The merchandise in question was held dutiable as follows: (1) Woven figured cotton cloth under paragraph 252; (2) cotton quilts, blankets, Jacquard figured towels, and Turkish towels under paragraph 264; and (3) cotton table damask under paragraph 263. Protests sustained in part.

No. 39310.—Protests 761925, etc., of E. McConnell & Co., and protests 760184, etc., of James McCutcheon & Co. et al. (New York).

FIGURED COTTON CLOTH.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton cloth, woven figured, under paragraph 252.

Opinions by COOPER, G. A. On the authority of United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501) the cotton cloth in question was held dutiable under paragraph 252, as claimed.

BEFORE BOARD 1, MARCH 1, 1916.

No. 39311.—Protests 789063, etc., of Geo. Borgfeldt & Co. (New York).

BONE COUNTERS—TOYS.—Small, flat, circular pieces of bone used as counters by children in the game of tiddlywinks, classified as parts of toys at 35 per cent ad valorem

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under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of bone at 20 per cent under paragraph 368.

Opinion by SULLIVAN, G. A. The evidence was held not sufficient to warrant reversing the collector's action.

No. 39312.—Protest 781386 of Knauth, Nachod & Kuhne (New York).

POWDER PUFFS—PILE FABRICS.—Powder puffs classified as in chief value of wool pile fabrics under paragraph 288, tariff act of 1913, at 35 per cent ad valorem, are claimed dutiable as manufactures of wool under the same paragraph or as brushes under paragraph 336.

Opinion by BROWN, G. A. On the authority of Abstract 38348 the powder puffs in question were held properly classified under paragraph 288.

BEFORE BOARD 2, MARCH 1, 1916.

No. 39313.—Protest 788108 of Alexis Witte Cutlery Co. (New York).

RAZOR BLADES.—Razor blades classified at 55 per cent ad valorem under paragraph 128, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by FISCHER, G. A. The blades were unaccompanied in the same shipment by any other razor parts. On the authority of G. A. 7815 (T. D. 35897), holding that single parts of razors separately imported are excluded from the provisions of paragraph 128, they were held dutiable according to the component material of chief value under paragraph 167.

No. 39314.—Protests 790441, etc., of L. Weisberg Co. (Philadelphia).

ENAMELED STEEL HOLLOW WARE.—Various articles composed of enameled steel hollow ware, classified as kitchen utensils at 25 per cent ad valorem under paragraph 134, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. Tea strainers, ladles, and skimmers were held dutiable under paragraph 167, as claimed. G. A. 7662 (T. D. 35049) followed. Protests sustained in part.

No. 39315.—Protest 791674 of American Express Co. (New York).

PARTS OF SPROCKET CHAINS.—Made-up sprocket chain, chain in knocked-down condition, and various chain repair parts, classified as sprocket chains at 25 per cent ad valorem under paragraph 126, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. The protest was sustained as to all items except a transmission chain and inner and outer links for chains, as to which items it was overruled.

No. 39316.—Protests 753477, etc., of Howard Bros. Manufacturing Co. et al. (Boston).

RUBBER-FACED CARD CLOTH.—Rubber-faced card cloth composed of two or three plies of cotton cloth, one ply of cloth made of flax and cotton, and one ply of india rubber, classified as manufactures of cotton at 30 per cent ad valorem under paragraph 266, tariff act of 1913, is claimed to be rubber chief value, dutiable at 10 per cent under paragraph 368.

COOPER, *General Appraiser:* * * * The question at issue is, What is the component material of chief value in this fabric? The deposition of the manufacturer in England was taken, and from his testimony it appears that, taking 225 square yards of the three-ply material as a basis for an estimate, the values of the components in that amount are as follows: Cotton cloth, £14 5s.; sheet rubber, £30 3s.; rubber solution or cement, £12 19s. 9d.; cloth of flax and cotton, £12 12s. 4d.

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The values of the components in the cloth composed of cotton and flax was given by the witness as follows: Cotton, £2 2s.; flax, £10 10s. 4d.

Following the method of finding the components in manufactured articles laid down in Meadows *v.* United States (2 Ct. Cust. Appls., 143; T. D. 31665), we find that the components in this material are cotton cloth, sheet rubber, rubber solution or cement, and cloth composed in chief value of flax, and of these, sheet rubber is the component material of chief value.

From the testimony it appears that the four-ply fabric is exactly like the three-ply fabric except that it has an extra layer of cotton. Taking the figures for the three-ply fabric given in the deposition as a basis, we find that the value of the cotton in 225 square yards of the four-ply fabric is £21 7s. 6d. and the value of the sheet rubber is £30 3s. Rubber is therefore chief value in both the three-ply and the four-ply fabrics, and we hold that the merchandise is properly dutiable at 10 per cent ad valorem as manufactures of india rubber under paragraph 368. To that extent the protests are sustained.

No. 39317.—Protests 741614, etc., of Frank & Lambert et al., and protests 772381, etc., of Knauth, Nachod & Kuhne (New York).

Figured Cotton Cloth—Cotton Blankets.—Cotton cloth and blankets classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable under paragraphs 252 and 264.

Opinions by Cooper, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501), the figured cotton cloth was held dutiable under paragraph 252. The blankets in question were held dutiable under paragraph 264 on the authority of G. A. 7748 (T. D. 35577).

No. 39318.—Protest 787767 of Dezell & Helwig (New York).

Cotton Cloth—Towels—Table Damask.—Damask table cloths, union and huck towels, and toweling, Jacquard figured, classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, and sofa and couch covers classified at 35 per cent under the same paragraph, are claimed dutiable under paragraph 252, 263, or 264, 258, or 266.

Opinion by Cooper, G. A. On the authority of G. A. 7630 (T. D. 34903) cotton table damask was held dutiable at 25 per cent under paragraph 263. Cotton toweling was held dutiable under paragraph 252. G. A. 7618 (T. D. 34858) followed. Cotton towels were held dutiable at 25 per cent under paragraph 264, on the authority of G. A. 7609 (T. D. 34819). Protest overruled as to the Jacquard figured sofa and couch covers and the union towels. Abstract 37629 followed.

Before Board 3, March 1, 1916.

No. 39319.—Protests 787474, etc., of Francesco Albano et al. (New York).

Weight of Cheese.—These protests relate to cheese in brine, classified at 20 per cent ad valorem under paragraph 196, tariff act of 1913.

Opinion by Waite, G. A. On the authority of G. A. 7867 (T. D. 36195) the cheese was held dutiable on the basis of the net landed weight, as claimed.

No. 39320.—Protest 767315 of S. & G. Gump Co. (San Francisco).

Manufactures of Ivory.—Carvings of ivory classified as manufactures of ivory under paragraph 369, tariff act of 1913, are claimed entitled to free entry as original works of art under paragraph 652.

Opinion by Waite, G. A. On the authority of Abstract 38686 these ivory carvings were held not entitled to free entry under paragraph 652. Protest overruled.

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No. 39321.—Protests 791227, etc., of Rafael Del Castillo & Co. et al. (New York).

COLA NUTS.—Cola nuts classified as nuts not specially provided for at 1 cent per pound under paragraph 226, tariff act of 1913, are claimed dutiable under paragraph 477 or 552.

Opinion by WAITE, G. A. Protests overruled on the authority of Abstract 38466.

No. 39322.—Protests 792525-57946, etc., of Baldwin Shipping Co. (Chicago).

PAPRIKA.—Ground Spanish red pepper classified at 1 cent per pound and 20 per cent ad valorem under paragraph 235, tariff act of 1913, is claimed dutiable under the provision in the same paragraph for "all other spices" at only 20 per cent.

Opinion by WAITE, G. A. Protests unsupported; overruled. G. A. 7854 (T. D. 36163) noted.

No. 39323.—Protest 793944 of G. W. Sheldon & Co. (New York).

GROUND PEPPER.—Merchandise classified as ground pepper at 1 cent per pound and 20 per cent ad valorem under paragraph 235, tariff act of 1913, is claimed dutiable under he same paragraph as unground pepper at 1 cent per pound.

Opinion by WAITE, G. A. Protest unsupported; overruled.

BEFORE BOARD 1, MARCH 3, 1916.

No. 39324.—Protests 766718, etc., of Fritsche Bros. (New York).

EUCALYPTOL—ESSENTIAL OIL.—Eucalyptol classified as essential oil at 20 per cent ad valorem under paragraph 46, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 5.

Opinion by MCCLELLAND, G. A. Upon stipulation of counsel the eucalyptol in question was held dutiable under paragraph 5, as claimed.

No. 39325.—Protest 760439 of Geo. Borgfeldt & Co. (New York).

ETHYL CHLORIDE—PERFUMERY.—Merchandise classified as perfumery at 60 per tent ad valorem under paragraph 48, tariff act of 1913, is claimed dutiable as ethyl chloride at 20 per cent under paragraph 29.

Opinion by BROWN, G. A. On the authority of G. A. 7658 (T. D. 35026) the merchandise in question was held dutiable under paragraph 29.

BEFORE BOARD 2, MARCH 3, 1916.

No. 39326.—Protests 788400, etc., of Thomas J. Wilbee (Buffalo).

SECONDHAND JUTE SUGAR BAGS.—Secondhand jute sugar bags made from a twilled jute fabric and having two or three small colored stripes extending down the center of each bag, classified as manufactures of vegetable fiber at 35 per cent ad valorem under paragraph 284, tariff act of 1913, are claimed free of duty as waste under paragraph 408, or dutiable at 10 per cent under paragraph 281 as bags made from plain woven fabrics.

Opinion by COOPER, G. A. It was found that the merchandise is secondhand bags, some torn, which, after repairing, are intended to be used as bags for holding merchandise. On the authority of Abstract 37088 they were held not dutiable under paragraph 281, and the merchandise was h ld not to be waste of any of the materials enumerated in paragraph 408. Protests overruled. Abstract 37584 cited.

No. 39327.—Protests 412317, etc., of Japanese Fancy Goods Importing Co. et al. (San Francisco).

DRAWNWORK HANDKERCHIEFS.—Handkerchiefs and doilies ornamented by drawnwork, classified at 60 per cent ad valorem under paragraph 349, tariff act of 1909, are claimed dutiable under paragraph 322, 356, 331, or 332.

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Opinion by COOPER, G. A. Drawnwork doilies were held properly classified under paragraph 349. Frank *v.* United States (5 Ct. Cust. Appls., 273; T. D. 34469) followed. No testimony having been offered to show whether the handkerchiefs are ornamented with plain or ornamental drawnwork, that claim was also overruled. Abstract 36830 (T. D. 34889) and Krusi *v.* United States (1 Ct. Cust. Appls., 168; T. D. 31213) cited.

No. 39328.—Protest 776749 of J. C. Klein (New York).

COTTON TABLE DAMASK—COTTON TOWELS.—Cotton damask tablecloths and towels, classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable at 25 per cent under paragraphs 263 and 264, respectively.

Opinion by COOPER, G. A. On the authority of G. A. 7630 (T. D. 34903) cotton table damask was held dutiable under paragraph 263. The cotton towels were held dutiable under paragraph 264. G. A. 7609 (T. D. 34819) followed.

No. 39329.—Protests 745307, etc., of Snow's United States Sample Express Co. (New York).

FIGURED COTTON CLOTH.—Figured cotton cloth classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at the appropriate rates under paragraphs 252 and 253.

Opinion by COOPER, G. A. On the authority of United States *v.* Sherman (6 Ct. Cust. Appls., —; T. D. 35501), affirming G. A. 7618 (T. D. 34858), figured cotton cloth was held dutiable under paragraph 252, as claimed.

REHEARINGS GRANTED.

FEBRUARY 1, 1916.

No. 39330.—CHURCH WINDOWS.—Protest 783447 of Kennedy & Moon. Abstract 38755.

No. 39331.—POCKET PENCILS.—Protests 778457, etc., of T. Meadows & Co. et al. Abstract 38902.

No. 39332.—POCKET PENCILS.—Protest 769672 of E. G. Seltmann. Abstract 38902.

FEBRUARY 10, 1916.

No. 39333.—BRONZE STATUARY.—Protest 725634 of Sherwin Williams Co. Abstract 39045.

(T. D. 36221.)

Reduction of entered value.

Relief denied under the provisions of paragraph I of section 3 of the tariff act of 1913, where importer made alternative or speculative contentions as to market value, and it appeared that his diligence and inquiry relative thereto had been directed only toward determining the highest value that up to that time had been returned by the local appraiser.

TREASURY DEPARTMENT, *March 7, 1916.*

SIR: The department refers to your letter of January 14 last, transmitting the application for a reduction of the entered value under the provisions of paragraph I of section 3 of the tariff act of certain aniline oil covered by entry No. 26568.

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The merchandise was invoiced at a price of 10.77d. per pound, plus the cost of drums, and entered at a value of 12d. per pound. At the time of entry the importer certified that the entered value was higher than the foreign market value, etc., as required by the statute, and claimed that liquidation should be made as follows:

We contend that duties should be assessed on the wholesale market value, which is less than the entered value, and alternatively upon the invoice, the reappraised or the rereappraised value, and that upon liquidation either the invoice, the reappraised, or rereappraised values should be the basis of the ascertainment of duties.

The entered value was approved by the appraiser, but the importer appealed for reappraisement, and the market value of the merchandise was returned at 7d. per pound, plus the cost of drums. The importer states that the invoice value was advanced to 12d. per pound for the following reasons: (1) Because of a former reappraisement; (2) because of the many appeals then pending based upon the extreme advances by the appraisers at New York and Boston; (3) because similar merchandise arriving on the same steamer was invoiced at 12d. per pound.

It appears that the only reappraisement pending at the time the entry was filed was on entry No. 329467, dated December 26, 1914, in which case the entered value of 8.419d. per pound was advanced by the appraiser to 9d. per pound.

The advance from 10.77d. per pound to 12d. per pound could not, therefore, have been made "in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement," as is required by the statute as a condition precedent to the liquidation of duties upon less than the entered value.

The statute invoked is found in paragraph I of section 3 of the tariff act of 1913. As the said act passed the House of Representatives this provision read, as it had in the acts of 1897 and 1909:

The duty shall not, however, be assessed in any case upon an amount less than the entered value.

As the bill passed the Senate it was made to read as follows:

The duty shall not, however, be assessed in any amount less than the entered value unless by direction of the Secretary of the Treasury after consideration of the particular case. The Secretary of the Treasury shall accompany his direction with a statement of his conclusions and the reasons for it.

In conference this language was changed to read as follows:

The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value, and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, and the importer's contention shall subsequently be sustained by a final decision on reap-

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praisement, and it shall appear that the action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, and the Secretary of the Treasury shall accompany his direction with a statement of his conclusions and his reasons therefor.

Under our tariff laws importers are presumed to know the market value of merchandise imported by them and must enter their merchandise at such value under penalty of the payment of the additional duties imposed by law for failure so to do. It is not the purpose of this statute to relieve importers of that liability. It is its purpose to give to importers the benefit of their success in contested reappraisement cases in which there is a clearly defined issue between them and the appraiser, and the position of the importer is fully sustained upon the final decision in those cases in which the advance is made on entry in good faith and after due diligence and inquiry on their part; that is to say, after such investigation as shall afford good reason to believe, and shall cause them to believe, that the value contended by them to be the value of the merchandise is, in fact, the actual market value thereof.

In order to grant relief in the case here presented the statute must be construed as if it read as it appeared in the bill as it passed the Senate, which would render nugatory the amendment made while the bill was in conference. All it would be necessary for any importer to do to circumvent the law would be to insure that a reappraisement should be always pending covering his line of merchandise. He could then make entry at the highest value that anyone had ever suggested for such merchandise, and thus avoid any possibility of the payment of additional duty and at the same time not be bound by the entered value. This would be equivalent to allowing entry by appraisement order on all lines of merchandise upon which a reappraisement was pending at the time entry was made, and the whole theory of the customs administrative laws relating to the entry of merchandise would fall.

In order to secure the benefit of the statute cited the importer must make a definite contention at the time of entry, which must be sustained upon final reappraisement. The advances must be made to meet advances made by the appraiser in cases then pending—that is, they must be equal to the value returned by the appraiser in such cases. In addition thereto he must show that such advances were made by him in "good faith after due diligence and inquiry on his part."

None of these conditions are shown to exist in the present case, and the application must therefore be denied.

Respectfully, ANDREW J. PETERS,
(101237.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36222.)

Limes in brine—Pickles.

Limes in brine dutiable at the rate of 25 per cent ad valorem as pickles under paragraph 201, tariff act of 1913.

TREASURY DEPARTMENT, *March 9, 1916.*

SIR: The department duly received your letter of January 26, 1916, relative to a proposed change in practice in the classification of pickled limes.

It appears that it has been the practice to classify such merchandise as free of duty as fruit in brine under paragraph 488 of the tariff act of 1913, following T. D. 26317 under the tariff act of 1897. It is proposed to change the classification to that of pickles.

The United States Court of Customs Appeals, in passing upon the classification of peppers in brine (T. D. 32078), notes the change in the provision for pickles, act of 1909, from the act of 1897, and expresses the opinion that the scope of the term was extended to cover nuts and like articles. In T. D. 35794 the Board of United States General Appraisers followed the court and held that certain plumlike fruit (umeboshi) in brine was dutiable under the provisions for pickles in the tariff acts of 1909 and 1913. It appears also that limes in brine are used to some extent as pickles and under earlier acts were classified as pickles (T. D. 708 and T. D. 5190).

In view of the foregoing the department approves of the proposed change in classification, and you will assess duty on limes in brine imported 30 days after the date hereof at the rate of 25 per cent ad valorem as pickles under paragraph 201 of the tariff act of 1913.

Respectfully, WM. P. MALBURN,
(104604.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36223.)

Entireties—Leather goods containing metal articles, etc.

Appeal directed from decision of the Board of United States General Appraisers of January 13, 1916, G. A. 7842 (T. D. 36079), involving the classification of certain vanity cases, pocket sets, or pocket toilets, etc.

TREASURY DEPARTMENT, *March 8, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 29th ultimo, inviting attention to the decision of the Board of United States General Appraisers of January 13, 1916, G. A. 7842 (T. D. 36079), wherein certain vanity cases, pocket sets, or pocket toilets, etc., which had been assessed with duty at the rate of 60 per cent

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ad valorem under paragraph 356 of the tariff act of 1913, were held by the board to be dutiable at the rate of 35 per cent ad valorem under paragraph 360 or at 20 per cent ad valorem or 50 per cent ad valorem under paragraph 167 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(91323.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36224.)

Importation and inspection of tea under act approved March 2, 1897.

TREASURY DEPARTMENT, *March 7, 1916.*

To officers of the customs and others concerned:

The appended copy of an act entitled "An act to prevent the importation of impure and unwholesome tea," approved March 2, 1897, and of the regulations hereby adopted thereunder, are published for your information and guidance.

Minor changes, principally in language, will be found in regulations 7, 11, 19, 20, 21, 22, 23, 24, 27, and 43.

These regulations will take effect on May 1, 1916, except as to teas shipped from abroad prior to that date, which will be governed by the regulations for the year 1915.

(61680–21.) WM. G. MCADOO, *Secretary of the Treasury.*

AN ACT To prevent the importation of impure and unwholesome tea.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after May first, eighteen hundred and ninety-seven, it shall be unlawful for any person or persons or corporation to import or bring into the United States any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards provided in section three of this act, and the importation of all such merchandise is hereby prohibited.[1]

T. D. 17995, 19022, 19179, 25119.

T. D. 29311.

SEC. 2. That immediately after the passage of this act, and on or before February fifteenth of each year thereafter, the Secretary of the Treasury shall appoint a board to consist of seven members, each of whom shall be an expert in teas, and who shall prepare and submit to him standard samples

T. D. 23509.

[1] Section 1 was amended, in an act approved May 16, 1908, by the addition of a proviso permitting the importation of low-grade tea, etc., "for the sole purpose of manufacturing theine, caffeine, or other chemical products whereby the identity and character of the original material is entirely destroyed or changed." This act and the regulations thereunder were published in T. D. 29311 of October 28, 1908.

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of tea; that the persons so appointed shall be at all times subject to removal by the said Secretary, and shall serve for the term of one year; that vacancies in the said board occurring by removal, death, resignation, or any other cause shall be forthwith filled by the Secretary of the Treasury by appointment, such appointee to hold for the unexpired term; that said board shall appoint a presiding officer, who shall be the medium of all communications to or from such board; that each member of said board shall receive as compensation the sum of fifty dollars per annum, which, together with all necessary expenses while engaged upon the duty herein provided, shall be paid out of the appropriation for "expenses of collecting the revenue from customs."

SEC. 3. That the Secretary of the Treasury, upon the recommendation of the said board, shall fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States, and shall procure and deposit in the customhouses of the ports of New York, Chicago, San Francisco, and such other ports as he may determine, duplicate samples of such standards; that said Secretary shall procure a sufficient number of other duplicate samples of such standards to supply the importers and dealers in tea at all ports desiring the same at cost. All teas, or merchandise described as tea, of inferior purity, quality and fitness for consumption to such standards shall be deemed within the prohibition of the first section hereof.

T. D. 17994, 18131, 18960.

SEC. 4. That on making entry at the customhouse of all teas, or merchandise described as tea, imported into the United States the importer or consignee shall give a bond to the collector of the port that such merchandise shall not be removed from the warehouse until released by the collector, after it shall have been duly examined with reference to its purity, quality, and fitness for consumption; that for the purpose of such examination samples of each line in every invoice of tea shall be submitted by the importer or consignee to the examiner, together with the sworn statement of such importer or consignee that such samples represent the true quality of each and every part of the invoice and accord with the specifications therein contained; or, in the discretion of the Secretary of the Treasury, such samples shall be obtained by the examiner and compared by him with the standards established by this act; and in cases where said tea, or merchandise described as tea, is entered at ports where there is no qualified examiner as provided in section seven, the consignee or importer shall in the manner aforesaid furnish under oath a sample of each line of tea to the collector or other revenue officer to whom is committed the collection of duties, and said officer shall also draw or cause to be drawn samples of each line in every invoice and shall forward the same to a duly qualified examiner as provided in section seven: *Provided, however,* That the bond above required shall also be conditioned for the payment of all customhouse charges which may attach to such merchandise prior to its being released or destroyed (as the case may be), under the provision of this act.

T. D. 18591.

SEC. 5. That if, after an examination as provided in section four, the tea is found by the examiner to be equal in purity, quality, and fitness for consumption to the standards hereinbefore provided, and no reexamination shall be demanded by the collector as provided in section six, a permit shall at once be granted to the importer or consignee declaring the tea free from the control of the customs authorities; but if on examination, such tea, or merchandise described as tea, is found, in the opinion of the examiner, to be inferior in purity, quality, and fitness for consumption to the said standards, the importer or consignee shall be immediately notified, and the tea, or merchandise described as tea, shall not be released by the customhouse, unless on a reexamination called for by the importer or consignee the finding of the examiner shall be found to be erroneous: *Provided,* That should a portion of the invoice be passed by the examiner, a permit shall be granted for that portion and the remainder held for further examination, as provided in section six.

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SEC. 6. That in case the collector, importer, or consignee shall protest against the finding of the examiner, the matter in dispute shall be referred for decision to a board of three United States general appraisers, to be designated by the Secretary of the Treasury, and if such board shall, after due examination, find the tea in question to be equal in purity, quality, and fitness for consumption to the proper standards, a permit shall be issued by the collector for its release and delivery to the importer; but if upon such final reexamination by such board the tea shall be found to be inferior in purity, quality, and fitness for consumption to the said standards, the importer or consignee shall give a bond, with security satisfactory to the collector, to export said tea, or merchandise described as tea, out of the limits of the United States within a period of six months after such final reexamination; and if the same shall not have been exported within the time specified, the collector, at the expiration of that time, shall cause the same to be destroyed.

T. D. 18177, 19142, 21387.

SEC. 7. That the examination herein provided for shall be made by a duly qualified examiner at a port where standard samples are established, and where the merchandise is entered at ports where there is no qualified examiner, the examination shall be made at that one of said ports which is nearest the port of entry, and that for this purpose samples of the merchandise, obtained in the manner prescribed by section four of this act, shall be forwarded to the proper port by the collector or chief officer at the port of entry; that in all cases of examination or reexamination of teas, or merchandise described as tea, by examiners or boards of United States general appraisers under the provisions of this act, the purity, quality, and fitness for consumption of the same shall be tested according to the usages and customs of the tea trade, including the testing of an infusion of the same in boiling water, and, if necessary, chemical analysis.

SEC. 8. That in cases of reexamination of teas, or merchandise described as teas, by a board of United States general appraisers in pursuance of the provisions hereof, samples of the tea, or merchandise described as tea, in dispute, for transmission to such board for its decision, shall be put up and sealed by the examiner in the presence of the importer or consignee if he so desires, and transmitted to such board, together with a copy of the finding of the examiner, setting forth the cause of condemnation and the claim or ground of the protest of the importer relating to the same, such samples and the papers therewith to be distinguished by such mark that the same may be identified, that the decision of such board shall be in writing, signed by them, and transmitted, together with the record and samples, within three days after the rendition thereof, to the collector, who shall forthwith furnish the examiner and the importer or consignee with a copy of said decision or finding. The board of United States general appraisers herein provided for shall be authorized to obtain the advice, when necessary, of persons skilled in the examination of teas, who shall each receive for his services in any particular case a compensation not exceeding five dollars.

SEC. 9. That no imported teas which have been rejected by a customs examiner or by a board of United States general appraisers, and exported under the provisions of this act shall be reimported into the United States under the penalty of forfeiture for a violation of this prohibition.

T. D. 19322.

SEC. 10. That the Secretary of the Treasury shall have the power to enforce the provisions of this act by appropriate regulations.

SEC. 11. That teas actually on shipboard for shipment to the United States at the time of the passage of this act shall not be subject to the prohibition hereof, but the provisions of the act entitled "An act to prevent the importation of adulterated and spurious teas," approved March second, eighteen hundred and eighty-three, shall be applicable thereto.

SEC. 12. That the act entitled "An act to prevent the importation of adulterated and spurious teas," approved March second, eighteen hundred and eighty-three, is hereby repealed, such repeal to take effect on the date on which this act goes into effect.

Approved, March 2, 1897.

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REGULATIONS.

1. The importation of any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards fixed and established by the Secretary of the Treasury, in accordance with section 3 of the tea act, is prohibited.

T. D. 21913, 22250.

Importations of tea may be entered either for consumption, transit to foreign countries, or for immediate transportation without appraisement, and all entries must be on the regular forms, and the regular serial numbers, for both bonds and entries, should be used.

T. D. 21913.

Tea entered for consumption must be stored as provided in article 12, pending examination, and special bond must be taken by the collector as provided in section 4, act of March 2, 1897.

T. D. 24582.

A bond shall be taken from the importer that such tea shall not be removed from the warehouse until released by the collector. This bond (Cat. No. 3893—old No. 821) shall be under a penalty equal to one-fourth the invoice value of the tea, and shall also be conditioned for the payment of all customhouse charges which may attach to the merchandise prior to its being released, exported, or destroyed, as the case may be, under the provisions of law.

This bond shall be canceled upon the issuance of a permit for release (Cat. No. 4341—old No. 822) or upon the filing of a new bond for the exportation of the tea, as provided in section 6 of the act, or upon the destruction of the merchandise as provided for hereinafter.

T. D. 25903.

2. The examination of teas shall be made by means of samples to be drawn from packages designated by the collector and to be furnished by the importer, or of samples to be obtained by the examiner. The importer shall furnish a sworn statement that any samples submitted by him to the examiner are drawn from packages designated by the collector and covered by his entry (naming the vessel), and that to the best of his knowledge and belief they represent the true qualities of each and every part of the invoice (including the proportion of dust) and accord with the specifications therein contained. The importer shall submit with his entry a chop list or specification of the several lines included in the invoice, and the collector shall select for examination packages representing the different lines. The examination and report upon such samples shall be made in accordance with the provisions of section 7 of the above act, and the result of this examination noted on the invoice and entry before liquidation of the entry.

3. Imported teas entered at an exterior port destined for immediate transportation to an interior port shall be forwarded without detention.

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In case an entry of imported tea shall be made at a port or subport where there shall be no duly qualified examiner, samples shall be furnished by the importer to the chief officer of the customs at such port, in the manner above set forth, and duplicate samples shall be obtained by such chief officer, all of which shall be forwarded by him to the appraiser at the nearest port of entry at which a qualified examiner shall have been designated by the Secretary of the Treasury, and such samples shall be examined by the examiner, whereupon the appraiser shall notify the chief officer at the proper port of entry at once by mail, except in cases where, by reason of distance or special urgency, the use of the telegraph may appear to be necessary, as to the report of the examination on the samples so submitted, and such chief officer shall take action accordingly. Qualified examiners are stationed at the ports of New York, Boston, Chicago, San Francisco, St. Paul, Tacoma, and Honolulu.

T. D. 18062.

T. D. 21518.

4. Samples sent from ports of importation to ports where tea examiners are stationed for the purpose of examination shall be packed in perfectly clean, new tin cans, cylindrical in shape, 2½ inches deep, 3 inches in diameter, of a capacity of 4 ounces, with tight slip covers, properly labeled, properly "seasoned," according to the custom of trade, and accompanied in each instance with an extract from the invoice, giving marks and numbers of packages, invoice number, name of consignee, name of importing vessel, date of importation, etc., in order that the importation may be identified by the examiner, and to the end that, in case of rejection and exportation, should an attempt be made to reenter the teas at another port, their identity can be established.

T. D. 21439.

In all cases samples drawn by the importer and by the customs officer should be forwarded, and the name of the importer or customs officer drawing the samples should appear on the label.

5. If, after examination, the tea is found not to be prohibited under the act, a permit shall at once be granted to the importer declaring the tea free from control of the customs authorities; but if, on examination, such tea, or merchandise described as tea, is found, in the opinion of the examiner, to come within the prohibitions of the law and of these regulations, the importer shall be immediately notified, and the tea, or merchandise described as tea, so returned, shall not be released by the customhouse authorities, unless on a reexamination called for by the importer the return of the examiner shall be found erroneous. Should a portion only of the invoice be passed by the examiner as correct, a permit of delivery shall be granted for that portion and the remainder be held as provided in section 6 of the act. Any portion of an importation of tea entered for consumption

T. D. 18692.

T. D. 21913.

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which may be rejected will be held under the special tea bond until it is either destroyed or exported according to law, and the entry is not to be accounted for to the Treasury Department in the warehouse and bond account.

6. In case the collector, importer, or consignee shall protest against the finding of the examiner, the matter in dispute shall be referred for decision to a board of three United States general appraisers, designated by the Secretary of the Treasury, and if such board shall, after due examination, find the tea in question to be equal in purity, quality, and fitness for consumption as compared with the proper standards, a permit shall be issued by the collector for its release and delivery to the importer; but if upon such final reexamination by such board the tea shall be found to be inferior in purity, quality, and fitness for consumption, as compared with the said standards, the importer or consignee shall give a bond, with security satisfactory to the collector, to export said tea, as provided in these regulations.

T. D. 18515.

7. The collector shall promptly notify the importer of the return of the examiner on his importation, and if the importer desires the same to be reviewed by a board of three general appraisers, as provided in section 6 of the said act, he shall, within 30 days after he has been notified of such return, file a written application with the collector in the form Cat. No. 4345.

The collector will thereupon forward such application to the board of three general appraisers designated by the Secretary of the Treasury for review of the matters in dispute, and the proceedings shall be according to section 8 of the act.

The reexamination of tea samples must be restricted to the samples put up and sealed by the examiner in the presence of the importer or consignee, if he so desires, and transmitted to the board, together with a copy of the finding of the examiner, setting forth the cause of condemnation.

T. D. 21907.

8. No teas found on final examination to be unlawful importations under this act shall be released from bond except for the purpose of immediate exportation or for destruction, as the case may be.

9. Whenever a bond is given to export any condemned tea in pursuance of the act, it will be canceled upon the filing of an outward bill of lading and a duly authenticated certificate of clearance from the customs officer supervising the lading thereof, as in the case of rejected foods and drugs (T. D. 28841), and all accrued charges must be paid before issuance of permit for exportation.

10. Whenever condemned tea is to be destroyed it must be conveyed to some suitable place, and proper means, to be prescribed by the examiner, must be used for its effctual destruction, which shall be effected in the presence of an officer of the customs, detailed by the

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collector for the purpose. Before the tea is destroyed a particular description or statement of the same must be prepared containing the name of the importer or owner, the date of importation, the name of the vessel, and the place from which imported, with the character and quantity of the tea and the invoice value. The fact of its destruction must be certified on said statement by the officer detailed as aforesaid, which statement must be filed in the customhouse.

11. The examination of tea in comparison with the standards under this act shall be made according to the usages and customs of the tea trade, including the testing of an infusion in boiling water, and, if necessary, chemical analysis; and examiners are advised, inasmuch as they must not under the law admit any tea inferior to the standards in purity, quality, and fitness for consumption, to employ the present methods of determining the presence of artificial coloring and other impurities. (See Reg. 20, under "Comparison with Standards.")

12. Warehouses for the storage of tea will be designated by the collector, and the proprietor thereof will be required to give a bond in the form prescribed. (Cat. No. 3891.) Teas not stored in such designated warehouses will be placed in general order store or in public store pending examination and release on proper permit. In the absence of proper storage facilities at customhouses, teas may be retained in locked cars as constructive warehouses, under proper supervision, pending examination.

T. D. 18281.

T. D. 22184, 23456.

The importer's premises may be designated as warehouses for the storage of tea on the filing of the bond provided for by these regulations, but whenever, in the discretion of the collector, it shall be considered desirable a storekeeper shall be assigned to the supervision of such premises at the importer's expense while the teas shall remain under bond therein.

13. When tea under examination is stored in any warehouse, it must be so placed as to be separate from other merchandise, and so as to allow convenient supervision by customs officers. At ports where there are no bonded warehouses, class 2 or 3, the chief officer of the port will, when necessary, procure suitable premises for the temporary storage of any tea arriving at his port. The repacking of tea in warehouse for export purposes is not allowed.

T. D. 18281.

T. D. 23456.

All expenses of storage, cartage, and labor must be paid by the importer.

T. D. 23327.

14. Teas to be exported for the reason that they are within the prohibition of the statute will be entered for exportation in accordance with the following form, and bond shall be given for their exportation in a penal sum equal to double

T. D. 21814.

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the value of the tea, under form Cat. No. 3575, modified to conform to the evidence of exportation specified in regulation 9, *supra:*

Entry for exportation of impure and unwholesome teas.

Entry for the exportation of the following described teas imported into the United States by ——— ———, in the ———, from ———, on the ——— day of ———, ——, and now deposited in ———, No. ——— Street, intended to be exported by ——— ———, on board the ———, ——— ———, master:

Marks and numbers.	Description of merchandise.	Quantity.	Value.	Remarks.

The tea must be laden for export under the supervision of a customs officer in the usual manner.

15. At interior ports the export entry shall be made for transportation and immediate exportation in bond.

Sec. 9, act of Mar. 2, 1897.
T. D. 25116, 25120, 25121.

16. No imported teas which have been rejected by a customs examiner, or by a board of United States general appraisers, and exported under the provisions of this act, shall be reimported into the United States under the penalty of forfeiture for a violation of this prohibition. Customs officers will make seizure of any tea so reimported.

T. D. 17712, 17781, 18298, 18368, 18664.

17. Chief officers of customs may order such an examination of packages containing tea as will satisfy them that no dutiable goods are packed therein. For this purpose the customary designation should be made of packages for examination in public store.

T. D. 32554.

18. For the purpose of securing uniformity in the treatment of imported tea, each tea examiner will send to the supervising tea examiner 1-pound samples of the teas rejected by him; also such other samples of teas as the supervising tea examiner may direct. To each sample a label (Customs Cat. No. 6489) shall be affixed.

In case a tea examiner is in doubt as to whether an importation of tea should be passed or rejected, he should forward a sample thereof to the supervising tea examiner for advice.

When so directed by the department, the supervising tea examiner will visit the various ports at which tea examiners are stationed, in order to observe and report upon the methods of examination which are in operation, the instruments and apparatus used therefor, and the keeping of the records pertaining thereto.

He will also investigate and report upon such matters and perform such duties in connection with the enforcement of the tea act as may hereafter be assigned to him by the Secretary of the Treasury.

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19. The following are the standards selected by the board of tea experts, which are hereby fixed and established as standards under this act for the year 1916:

1. Formosa Oolong.
2. Foochow Oolong.
3. Congou.
4. Ceylon (used for India).
5. Gunpowder, green.
6. Young Hyson, green.
7. Japan, pan fired.
8. Japan, basket fired.
9. Japan, dust.
10. Scented Orange Pekoe (used for capers).
11. Scented Canton.
12. Canton Oolong.

COMPARISON WITH STANDARDS.

20. In comparing with standards examiners are to test all the teas on these points, namely—for quality, for artificial coloring or facing matter, and other impurity, and for quality of infused leaf. Quality shall be ascertained by drawing, according to the custom of the tea trade, with the weight of a silver half dime to the cup. The quality must be equal to standard, but the flavor may be that of a different district, as long as it is equally fit for consumption. As an illustration, a Teenkai may be equal to a Moyune, but a distinctly smoky or rank Fychow or Wenchow of sour character is not considered equal to the first two mentioned.

In examining Japans and all other green (unfermented) teas, while limiting the comparisons in the matter of infused leaf to the specific standard called for, examiners are advised to admit teas upon the question of quality, in the two kinds above cited, provided that they are equal in the case of Japans to either the pan-fired or the basket-fired standard; in all other greens to either the Gunpowder or the Young Hyson standard.

21. In order to test the quality of the infused leaf in comparison with the standard, a second drawing should be made of double weight. After pouring off the water, the infused leaf should be taken out so as to exhibit the lower side which rested against the cup. Should the mass show a larger quantity of exhausted or decayed leaf than the standard it affords sufficient evidence to be judged inferior in quality and consequently to be rejected.

22. To examine for artificial coloring or facing matter, it is advised that the following-described method be used in comparison with the standard, viz:

READ METHOD, WITH ADDITIONS AND MODIFICATIONS, FOR EXAMINATION OF TEA FOR CERTAIN ARTIFICIAL COLORING SUBSTANCES.

Place 2 ounces of tea in a sieve 5 or 6 inches in diameter, having 60 meshes to the inch and provided with a top. Sift a small quantity of the dust onto a semiglazed white paper about 8 by 10 inches. The amount of dust placed on the paper should be approximately 1

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grain. To get the requisite amount of dust it is sometimes necessary to rub the leaf gently against the bottom of the sieve, but this must not be done until the sieve has been well shaken over the test paper. The dust thus collected should be poured from the paper into the scales, and after weighing the amount of 1 grain it is returned to the same paper, and should be well distributed over the surface of the paper. The paper should then be placed on a plain, firm surface, preferably glass or marble, and the dust crushed by pushing over it, with considerable pressure, a flat steel spatula about 5 inches long. This is done repeatedly, the tea dust being ground almost to a powder and the particles of coloring matter, if any, being thus spread or streaked on the paper, so as to become more apparent. The loose dust should then be brushed off and the paper examined by means of a simple lens magnifying 7½ diameters. In distinguishing these particles and streaks bright light is essential.

The crushed leaf in either black or green tea appears in such quantity that there is no chance of mistaking the leaf for artificial coloring or facing material.

This test is performed in comparison with the standard, and if the tea is clearly equal to the standard as regards artificial coloring or facing matter, the operation need not be repeated. If particles of artificial coloring or facing are found in the sample under comparison with the standard, this operation should be repeated a sufficient number of times for the examiner to satisfy himself as to whether or not the tea is in fact equal thereto. If found not equal to the standard, samples should be drawn from packages representing at least 5 per cent of the line in question and subjected to the above test, and if a majority of these samples are below the standard, a test sheet of the tea in question, as well as a sample of the tea, should then be sent to the local appraiser's chemist or to the nearest pure-food laboratory of the Department of Agriculture for identification of the artificial coloring or facing matter disclosed. If artificial coloring or facing matter is identified, then the tea would justly be rejected.

The above test may be applied to all varieties of tea.

In the case of Japans and all other green (unfermented) teas, in addition to the above white-paper test, repeat the operation in comparison with the respective standard on semiglazed black paper for facings, and if it is not equal to the standard, additional samples should be drawn and tested as provided above in the test on white paper, and if found below the standard after the facing disclosed has been duly identified by the chemist, the tea would properly be rejected as not being equal to the standard in purity. This black-paper test detects all facings like talc, gypsum, barium sulphate, clay, etc.

23. Should a tea prove on examination to be inferior to the standard in any one of the requisites—namely, quality, quality of infused

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leaf, or artificial coloring or facing or other impurity—it would justly be rejected, notwithstanding that it be superior to the standard in some of the qualifications. No consideration shall be given to the appearance or so-called style of the dry leaf.

24. Macao or Canton Congou and Brick tea should be compared with the standard for China Congou. The mustiness or damaged flavor exhibited in certain Canton teas would be just cause for rejection.

25. The dust and fannings in all Formosa and Foochow Oolongs, Canton teas, Congous, Indias, Ceylons, and Javas must be restricted to 8 per cent when sifted through a sieve of No. 16 mesh made of brass wire, and the same limit, viz, 8 per cent, must hereafter be applied to China, India, and Ceylon green teas. In order that the needle leaf and Pekoe tips may not be confounded with dust, they must be returned with the dust to the seive for a second and third sifting until separated.

26. In the case of Ceylon, India, and Java teas the needle leaf and Pekoe tips shall be separated by passing them together with the dust through a No. 26 sieve of No. 30 brass wire, after the tea has been first sifted through a No. 16 sieve.

27. Dust and fannings in Japanese teas must not exceed 4 per cent when tested by a No. 30 sieve of No. 31 brass wire. Before condemning any tea for dust, examiners shall sieve at least two packages. Examiners must follow absolutely the method of examination herein set forth.

28. In all cases of rejections by examiners, the importers should be notified of the reason for rejection—that is, whether it be on the ground of quality, character of infused leaf, dust, or admixture with foreign substance.

29. Whenever Japans, Ceylons, Indias, or any other teas are made up to imitate the green teas of China, they are to be examined in comparison with the China green standards. Should Japans be made as fermented teas, they are to be examined in comparison with the Congou standard.

All Powchong (scented) Formosa Oolong teas should be examined in comparison with the Formosa standard. T. D. 34339.

30. Examiners are instructed not to pass upon samples representing importations of tea imported separately from the importation and not drawn from the packages by the customs authorities or the importers; neither shall they give nonofficial opinions concerning samples.

31. Examiners shall preserve in tins for one year samples of all teas examined, for further reference in case of complaints, and the Board of General Appraisers should also retain a portion of all samples sent them on appeal for the same purpose. To this end,

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examiners shall always send to the board samples weighing at least 1 pound, and never otherwise than in tin cans securely labeled and well wiped and "seasoned." Half of such sample shall be utilized for the examination by the board and for return to the port of entry with decision, as heretofore, and the remaining half pound shall, if the tea be rejected by said board, be distributed among the various examiners for their information and guidance. As to such teas as are found by the board to be entitled to entry, the remaining half pound shall be returned with the decision.

32. Statistics showing the quantities of various kinds of teas admitted and rejected should be kept at the customhouses for future reference.

33. The standards, original and duplicate, will be prepared by the board of tea experts under the supervision of the collector of customs at the port of New York, who will pay all bills incidental thereto from the appropriation for defraying the expenses of collecting the revenue from customs, subject to the approval of the Secretary of the Treasury. Full sets will be furnished the board of tea experts and the collectors of customs at New York, Boston, Chicago, San Francisco, St. Paul, and Honolulu, and the deputy collector of customs at Tacoma. Any combination of importers, not less than five, may be furnished with a full set of samples, consisting of one full package of each number for exportation either to China, Japan, India, Ceylon, or England, or, if preferred by such combination, the samples may be packed in 5-pound packages, the price of full sample packages and 5-pound packages to be fixed by the collector of customs at New York after consultation with the chairman of the board of tea experts. Samples for exportation, as aforesaid, can be obtained only upon an affidavit showing intention to export and exhibiting names of foreign consignees.

T. D. 22905.

34. A quantity of tea of the approved standards will be repacked in half-pound tin containers by competent tea packers under the constant supervision of an officer of the customs at New York, and lines of such samples will be furnished to the examiner at New York, to actual importers, and to regular tea brokers, on application to the collector of customs at New York, at the actual cost of the same.

35. Where tea is put up in packages of not over 2 pounds in weight, imported by mail, express, or otherwise from the country of production, and the fact is established that the packages are samples for distribution, or for use in soliciting orders, and not for sale, no examination should be made under the act of March 2, 1897, and they may be delivered at once to the importer.

T. D. 19810, 19899, 22138, 24542, 24590, 24874.

Packages of tea not exceeding 5 pounds in weight brought by passengers may be delivered without examination for purity under the act of March 2, 1897.

T. D. 24559.

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36. Unclaimed teas should be taken possession of by collectors, the same as other unclaimed goods, and placed in "general order," but not sold at the expiration of the year unless declared fit for consumption by a designated tea examiner. T. D. 18091, 20288.

37. In cases of importations of tea containing an excessive amount of dust, the dust can be exported after sifting, or destroyed under customs supervision, and the tea admitted to entry if found up to the standard. T. D. 18271.

38. Tea packages and contents should be treated as a unit, and no separation of tea from its covering can be allowed, either for exportation or destruction. T. D. 18489.

39. Teas rejected by tea examiners and rejections affirmed by the Board of General Appraisers can not be reexamined. T. D. 18057.

40. After standard samples shall have served their purpose and new season samples substituted, the old samples may be included in quarterly sales of unclaimed goods and the proceeds paid into the Treasury after deducting expenses of advertisement and sale, the designation on the packages showing such teas to have been used as Government standards to be obliterated before delivery to purchaser. T. D. 21531.

Surplus samples drawn from importations for purposes of examination, and which represent pure tea as declared by the examiner, should be placed in public store, the importer notified, and the samples held subject to his order for a period not exceeding one year. If not called for within that time they should be included in quarterly sales of unclaimed goods, as above. T. D. 22273.

Surplus samples representing tea which has been finally rejected should be destroyed by the collector, or after being denatured should be sold for manufacturing purposes under the act approved May 16, 1908.

41. No tea shall be delivered to the importer or removed from warehouse for any purpose before the examination required by the tea act.

42. Rejected tea can only be released or withdrawn for exportation, for transportation and exportation, or for manufacturing purposes under the act of May 16, 1908, and the regulations thereunder in T. D. 29311, as the case may be.

43. Tea dust or broken leaf mixed with other teas or separate, made to imitate gunpowder or other teas, with the use of paste or gum, or any other substance, would justly be rejected.

44. If the examiner suspects the presence of paraffin or any similar substance, he should make the following test in comparison with the standard: Spread the tea between two sheets of unglazed white

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paper. Place thereon a hot iron. The greasy substance, if any, will appear on the paper, and if not equal to the standard the tea shall be rejected.

45. When comparing teas with respective standards, care should be used by the examiners not to confuse particles of charcoal, charred leaves, and stems with coloring or facing matter.

(T. D. 36225.)

Drawback on crown corks.

T. D. 35787 of October 16, 1915, amended to provide for an allowance for waste.

TREASURY DEPARTMENT, *March 10, 1916.*

SIR: The department's regulations of October 16, 1915 (T. D. 35787), providing for drawback on crown corks, manufactured by the Crown Cork & Seal Co., of Baltimore, Md., with the use of imported cork disks, are hereby amended to provide that an allowance may be made for waste resulting during the process of manufacture.

The manufacturing record prescribed in T. D. 35787 shall show, in addition to the data already required, the daily manufacturing loss in damaged or destroyed disks, and, in the case of crown corks, manufactured on special order for exportation, the actual number of disks damaged or destroyed in the process of manufacture.

The allowance for waste shall not exceed the actual loss incurred in the case of crown corks manufactured on special order, or the average loss on the day of manufacture in the case of other crown corks, as shown by the abstract from the manufacturing record.

Respectfully, WM. P. MALBURN,
(64832.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 36226.)

Drawback on vanillin.

T. D. 35424 of May 21, 1915, extended to cover vanillin manufactured by the Monsanto Chemical Works, of St. Louis, Mo., with the use of oil of cloves produced from imported cloves by J. A. Crombie & Co. and George Lueders & Co., of New York, N. Y., and others.

TREASURY DEPARTMENT, *March 10, 1916.*

SIR: The department's regulations of May 21, 1915 (T. D. 35424), providing for drawback on "vanillin," manufactured by the Monsanto Chemical Works, of St. Louis, Mo., with the use of oil of cloves manufactured by the Verona Chemical Co., of North Newark, N. J.,

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from imported cloves, are hereby extended to cover "vanillin" manufactured by the Monsanto Chemical Works with the use of oil of cloves produced by J. A. Crombie & Co. and their successors, George Lueders & Co., both of New York, N. Y., from imported cloves, or with the use of oil of cloves produced by other concerns from imported cloves, provided the payment of drawback on oil of cloves produced by such concerns has been duly authorized.

The sworn statements of George Lueders & Co. and J. A. Crombie & Co., dated February 3 and 5, 1916, respectively, are transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(100959-1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36227.)

Drawback on bottled and kitted olives.

T. D. 33613 of July 11, 1913, and T. D. 33818 of October 28, 1913, extended to provide for the filing of supplemental sworn schedules.

TREASURY DEPARTMENT, *March 11, 1916.*

SIR: The department's regulations of July 11, 1913 (T. D. 33613), and October 28, 1913 (T. D. 33818), providing for drawback on bottled and kitted olives produced by R. C. Williams & Co., of New York, N. Y., are hereby extended to provide for the filing of supplemental sworn schedules covering changes in the size and additional sizes of containers in which the exported product is packed.

Upon verification of such supplemental sworn schedules drawback may be allowed on bottled and kitted olives exported in the containers described therein.

A supplemental sworn schedule of the said company, dated January 14, 1916, is transmitted herewith for filing in your office.

Respectfully,
(94403-3.) WM. P. MALBURN,
Assistant Secretary.
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36228—G. A. 7873.)

Fusible enamel.

Enamel, having the appearance of glass, or a crystalline appearance, imported in thin, flattened, pressed, variously colored cakes, which in its use is finely powdered, mixed with water to a paste, applied to the metal article to be enameled, and then fired by intense heat, thereby fixing it to the surface of the metal, is dutiable under

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paragraph 96 of the tariff act of 1913 as fusible enamel, and not under the provision for "all ceramic and glass fluxes, glazes, enamels, and colors, * * * not specially provided for" in paragraph 63.

United States General Appraisers, New York, March 8, 1916.

In the matter of protests 778131, etc., of P. H. Petry Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Crim & Wemple (*William L. Wemple* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers).

SULLIVAN, *General Appraiser*: The subject of these protests was assessed with duty under that part of paragraph 96 of the tariff act of 1913, which reads:

96. Fusible and glass enamel, not specially provided for in this section, 20 per centum ad valorem. * * *

The protests claim it dutiable at 15 per cent ad valorem under paragraph 63 of the same act, providing for—

63. Enamel paints, and all paints, colors, pigments, stains, crayons, including charcoal crayons or fusains, smalts, and frostings, and all ceramic and glass fluxes, glazes, enamels, and colors, whether crude, dry, mixed, or ground with water or oil or with solutions other than oil, not specially provided for in this section, * * *.

There is also a claim for a discount of 5 per cent on duties by virtue of section 4 of paragraph J of subsection 7 of said act; but inasmuch as no evidence has been introduced tending to support this claim, the same need not be considered.

Two witnesses testified in this case, one on behalf of the protestants and the other for the United States.

The testimony of the protestants' witness (a manufacturing jeweler) is to the effect that the merchandise is raw enamel, imported in thin, flattened, pressed cakes, having the appearance of glass, or a crystalline appearance. These cakes are variously colored. He testified that to prepare this merchandise for use it is ground as finely as possible, and mixed with water into a pasty composition. It is then applied to the metal article of jewelry desired to be colored, and afterwards fired by intense heat, which fixes it to the surface of the metal. Protestants' witness further testified it is called enamel color, and that he has never heard it called fusible enamel; that he does not know the technical term "fusible enamel;" also that this article is never melted or fused in order to be applied; that it is sometimes applied over other enamel surfaces, but that the base is always metal. We quote the following from his cross-examination:

Q. Do you know what fusible enamel is?—A. No, I don't know what the word "fusible" means unless it means something that can be melted.

Q. This article can be melted, can it not?—A. Yes, sir.

Q. In fact, it is applied in its final application to these articles by intense heat, isn't it?—A. Why, yes; *it has to be melted.*

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It will be observed that nowhere in his testimony does this witness state the merchandise is not fusible enamel.

The dictionary definition of "fusible" is "capable of being fused *or melted by heat;*" of "fuse," "to liquefy (a solid) by heat; melt; make fluid. *To unite or blend, as by melting together.* To become fluid by heat; melt. To combine or blend, as if melted together; * * *."

The witness testifying on behalf of the United States, being an importer and manufacturer of vitrifiable colors, chemicals, and general supplies for the pottery, glass, and enamel ware industries, with 18 years' experience in Europe and the United States in the manufacture and sale of enamels, having worked in Germany in factories making enamels and applying them, stated there were three classes of vitreous or vitrifiable enamels recognized in the trade—(1) fusible enamels *for use on metals;* (2) enamels for use in decorating glassware; and (3) enamels for decorating china or pottery. He stated:

The primary distinction between fusible enamel for use on metal and the enamel for use in decorating glassware would be that the enamel for the metal is much harder, as it requires considerably higher heat to fuse it than the enamel that would be used on glassware. Enamel to fuse on metal would require a temperature of 750° to, say, 820° C., and to fuse enamel on the glass, enamel for that purpose would require a temperature as low as 500° C.; certainly not over 650° C.

He also testified that he did not believe these enamels can be used interchangeably; that fusible enamel predicates a relief surface, and the color does not; that whatever is used as an enamel to the extent of a relief is a fusible enamel. On cross-examination this witness stated:

According to my experience I regard the term "fusible enamel" as meaning enamel for use on metal.

And that he believed the entire trade so regarded it.

As will be seen by an examination of the testimony, the protestants have not sustained the burden incumbent upon them of overcoming by a preponderance of evidence the presumption of correctness which attaches to the collector's decision. On the contrary, their witness's testimony tends to affirm it. The testimony of the Government's witness, on the other hand, clearly indicates to us that this merchandise is fusible enamel.

The protests are overruled, and the collector's decision affirmed in each case.

(T. D. 36229—G. A. 7874.)

Wilton and tapestry Brussels rugs.

Wilton and tapestry Brussels rugs woven in long lengths of from 40 to 60 yards, the place of separation of each rug being indicated by a break in the weave of the pile, are not carpet or carpeting within the meaning of the language of paragraph

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303 of the tariff act of 1913. Such rugs, after being so woven and before importation being separated by cutting at the lines indicated by the break in the weave of the pile and hemmed or fringed, are completed rugs, and, as such, are subject to duty at the rate of 50 per cent ad valorem under paragraph 300 of the tariff act of 1913.—G. A. 7606 (T. D. 34816), G. A. 6116 (T. D. 26613), G. A. 7217 (T. D. 31565), G. A. 7460 (T. D. 33406), Abstract 33475, and United States *v.* Buss & Co. (5 Ct. Cust. Appls., 110; T. D. 34138) cited.

BROWN, *General Appraiser*, dissenting, holds: Tapestry Brussels and Wilton rugs made from strips of carpeting which are marked mechanically at intervals as they go through the loom, by a process which leaves off the pile at each interval and leaves it ready to be cut into rugs, are properly classified under paragraph 303, act of 1913, covering "rugs for floors * * * and other portions of carpets or carpeting," which throws them under the provisions for similar carpeting, namely, paragraphs 294 and 297, and not under paragraph 300 as rugs similar to oriental, Berlin, Aubusson, and Axminster.—Beuttell *v.* Magone (157 U. S., 154) and G. A. 7606 (T. D. 34816) cited.

United States General Appraisers, New York, March 8, 1916.

In the matter of protest 781206 of Henry Beuttell & Sons against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Thaddeus S. Sharretts (*Thaddeus S. Sharretts*, *Edward P. Sharretts*, and *Samuel T. Siegel* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence* and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers; BROWN, G. A., dissenting).

MCCLELLAND, *General Appraiser:* The merchandise consists of Wilton and tapestry Brussels rugs, the appraiser distinguishing the former by the letter "A" and the latter by the letter "B" on the invoice. The collector assessed duty at the rate of 50 per cent ad valorem on both the Wilton and tapestry Brussels under paragraph 300 of the tariff act of 1913, which reads:

300. Carpets of every description, woven whole for rooms, and Oriental, Berlin, Aubusson, Axminster, and similar rugs, 50 per centum ad valorem.

Claim is made in the protest against the collector's action that they "are properly dutiable either directly or by virtue of paragraph 303 at the rate or rates of duty applicable to carpets or carpeting in paragraphs 294, 296, or 297 of the tariff act of October 3, 1913, namely, at 30 per cent ad valorem under paragraph 294, or at 20 per cent ad valorem under paragraph 297."

There is no dispute that the merchandise in the condition imported is completed rugs. This fact is at once apparent on an examination of the samples, and all through the trial they are referred to as rugs.

Although the facts presented are to be considered, the issue as it presents itself would seem to be one of law rather than of fact. The contention of protestants is that under the language of paragraph 303 these rugs, not being similar to those named in paragraph 300,

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may only be subjected to such rates of duty as would be levied under paragraphs 294 and 297 upon Wilton and tapestry Brussels carpets, while the Government as earnestly contends that the rugs in question are similar to the rugs provided for *eo nomine* in paragraph 300, and therefore are properly subject to duty under that paragraph as assessed, regardless of paragraph 303.

It would seem at first glance in approaching this issue as though it were a question of which of the two provisions, "similar rugs" in paragraph 300, or "mats, rugs for floors, * * * and other portions of carpets or carpeting, composed wholly or in part of wool, and not specially provided for in this section," in paragraph 303, is the more specific as applied to these rugs; but we are not so sure, upon reflection, that such is the fact. It is not to be questioned but that if paragraph 303, *supra*, had been omitted from the existing tariff act such rugs would have been classifiable under paragraph 300, and hence it becomes important to consider (1), whether 303 applies to such rugs at all; and (2), if it does so apply, whether its provision is more specific than that in paragraph 300. Of course, if the first of these queries is answerable in the negative, the second falls. There is no room for doubt that in framing paragraph 300 the congressional intent, in so far as it was designed to cover rugs, was to cover only rugs which in form and design were complete as such and clearly distinguishable from rugs made from carpeting and portions of carpet or carpeting, and the rugs in question are manifestly so distinguishable. It may be that the intent of the framers of paragraph 303, *supra*, is not so apparent; but to assume that Congress, in the preparation of Schedule K, followed the rug paragraph with another covering rugs already provided for would not be paying high compliment to the framers of this part of the law.

In paragraphs 293 to 299, inclusive, all kinds of wool carpets are provided for, and we can not conceive how anyone can read these paragraphs and paragraph 300 together without being convinced that, except as to made-up rugs such as are provided for in paragraph 303, it was clearly the intent of Congress to provide a higher rate of duty on rugs than on carpets of like material and weave. This view is aptly illustrated and confirmed by the *eo nomine* provision for Aubusson and Axminster carpets in paragraph 293, and Aubusson and Axminister rugs in paragraph 300; the former being made subject to duty at 35 per cent ad valorem and the latter at *50 per cent ad valorem.*

We strongly incline to the view that there is no conflict between paragraphs 300 and 303, nor is it even a close question as to whether the language of the latter was designed to cover rugs such as those here involved. Although these rugs may be woven and have the same finish as Wilton carpet or tapestry Brussels carpet, they are,

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nevertheless, woven into designs and sizes which fit them only for use as rugs, and are not therefore portions of carpet or carpeting. It is true that many of them are woven without a physical separation and that as they come from the loom they are united in one long length, but the design of each is complete in itself and each forms a unit, the line of separation being indicated by a break in the weave of the pile. That this is so is clearly shown by the following from the testimony of the witness H. D. Beuttell:

Q. Now, Mr. Beuttell, is it not a fact that these rugs are woven in long lengths, but each at specified intervals have intermissions which show where the lengths have to be cut off?—A. Yes, sir; that is a general practice.

Q. These various rugs here were woven in that way, so that the operator knows when they come off the loom just where each individual rug has to be segregated?—A. Yes, sir.

Q. When carpet comes off the loom is it arranged in any way with these intermissions showing where it is to be cut off?—A. This is carpet. This is carpet that comes off the loom.

Q. These are rugs, are they not?—A. No, sir; these are carpeting when they come off the loom. They are rugs afterwards when they are cut up.

Q. You have seen carpeting made which is intended to be used in long lengths and sewed together?—A. Yes.

Q. That is quite different in the style of manufacture from these rugs here?—A. I don't understand, different in style of manufacture.

Q. When carpeting comes off the loom in what lengths is it usually?—A. Generally in rolls of 40, 50, 60 yards, according to quality.

Q. Such carpeting when it is not intended to be made into rugs like these exhibits here are not made on the loom with these indications at intervals showing where it is to be cut longitudinally?—A. No, every roll of carpet that comes off the loom has to be cut according to requirements.

Q. After it goes into consumption?—A. After it goes into consumption.

Q. But these rugs when they come off the loom, while they may be in long lengths, show at intervals where they are to be cut off to meet the shape and dimensions of these rugs?—A. That's right.

And that these long lengths as they come from the loom are neither carpet or carpeting and are commercially of no use as such, but are exclusively made for rugs, is shown by the following from the testimony of the witness Victor Beuttell:

Q. You have testified that this material may come out of the loom in 50 or 60 yard lengths either with or without lines of demarcation noted?—A. Yes.

Q. Now suppose the lines of demarcation were not noted, has that strip any use other than for making rugs?—A. It has no practical commercial use.

Q. Is not that because the patterns are woven in such a way that that strip is adapted only to be cut to the lengths indicated by the patterns of the rug?—A. That strip is made just to serve the purpose of rugs ultimately.

Q. Exclusively?—A. Yes, that is what it was being made for.

These lengths, after coming from the looms and before importation, are cut apart where the interruption of the pile weave indicates they should be, and they then take the unquestionable form of rugs. As the witness H. D. Beuttell says, at page 11 of the record, "they

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are rugs afterwards when they are cut up." But to remove all possible question as to whether the weaving to the rug design and the cutting to form makes them rugs they are, after being so cut to form, generally hemmed or fringed, as shown by the exhibits. The classification of such rugs, we are convinced, is not affected by the provisions of paragraph 303 for the reason, as we have already indicated, that they are not and *never were* either carpet or carpeting.

Protestants lay stress upon the fact that these rugs being woven by machinery are not comparable with those named in paragraph 300, *supra*, but this view is vitiated by the admitted fact that Axminster rugs are made by machinery, so are also imitation Oriental rugs.

It is our view that paragraph 303 must be construed as though it read "mats, rugs for floors made of carpet * * * or other portions of carpet or carpeting, composed wholly or in part of wool."

In G. A. 7606 (T. D. 34816) the board had under consideration the classification of Brussels and Wilton rugs, the dimensions of which were 9 feet by 12 feet, made of Brussels and Wilton carpeting of the usual 27-inch width with borders of like materials but of different patterns from the carpetings. These had been classified at 10 cents per square foot and 40 per cent ad valorem under paragraph 391 of the tariff act of 1909. In construing paragraph 394 of that act, which was in the same language as paragraph 303, *supra*, of the act of 1913, Judge Brown, writing for the board, said:

> Here, again, by association, the rugs for floors spoken of would seem to be so-called rugs (made rugs) made up from portions of carpets or carpeting, for the words "and portions of carpets or carpeting" directly refer to the rugs for floors with which they are connected in the context.

This is in complete harmony with our view that the rugs contemplated by the language of paragraph 303 are rugs which are made up from material woven as and designed for use as carpet or carpeting. With this paragraph eliminated from consideration, in seeking the proper provision under which to classify these rugs, it follows that they must fall within the provisions for "similar rugs" in paragraph 300. When the wide differences in mode of manufacture, texture, and design between Oriental, Berlin, Aubusson, and Axminster rugs are considered the words "and similar rugs" must be given a broad meaning. The rugs in question are woven to design, are similar in shape and adapted to similar uses, and are, in our opinion, subject to the same rate of duty.

In G. A. 6116 (T. D. 26613) the board had before it the question of the classification of men's silk scarfs imported in pieces of various lengths, each scarf being definitely indicated by the absence of warp and filling threads at intervals where they had only to be cut to separate them, and it was held that such scarfs were dutiable as wearing apparel.

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Again, in Abstract 33475, the board held that running lengths of woven cotton strips with ridges or cross marks therein to indicate where they should be cut into lengths as coat hangers were subject to duty as manufactures of cotton rather than as tapes, and this conclusion was affirmed by the Court of Customs Appeals in United States *v.* Buss & Co (5 Ct. Cust. Appls., 110; T. D. 34138). Judge Martin, in writing for the court, said, among other things:

The rule expressed by the decisions just cited recognizes the fact that most small articles are not produced as individual or separate products of the loom, but for economy of manufacture are first woven "in the piece." The rule of decision is therefore established that where such articles are imported in the piece and nothing remains to be done except to cut them apart they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. This follows, however, only in case the character or identity of the individual articles is fixed with certainty and in case the woven piece in its entirety is not commercially capable of any other use.

See also G. A. 7217 (T. D. 31565) and G. A. 7460 (T. D. 33406).

The merchandise in question is clearly within this rule, and the protest is therefore overruled.

DISSENTING OPINION.

BROWN, *General Appraiser:* The appraiser says in his report:

The merchandise marked "A" consists of seamless Wilton rugs and that marked "B" of seamless tapestry Brussels rugs. Both items were returned for duty, respectively, as seamless Wilton rugs and seamless tapestry Brussels rugs similar to Axminster rugs, at 50 per cent ad valorem under paragraph 300, act of 1913, in conformity with department instructions in T. D. 35062.

Paragraph 300 reads:

Carpets of every description, woven whole for rooms, and Oriental, Berlin, Aubusson, Axminster, and similar rugs, 50 per centum ad valorem.

The protest states:

That the mats, rugs, and similar merchandise assessed at 50 per cent ad valorem under paragraph 300 are properly dutiable either directly or by virtue of paragraph 303 at the rate or rates of duty applicable to carpets or carpeting under paragraphs 294, 296, or 297 of the tariff act of 1913, namely, at 30 per cent ad valorem under paragraph 294, or at 20 per cent ad valorem under paragraph 297.

Paragraph 294 reads:

Saxony, Wilton, and Tourney velvet carpets, figured or plain, and all carpets or carpeting of like character or description, 30 per centum ad valorem.

Paragraph 297 reads:

Tapestry Brussels carpets, figured or plain, and all carpets or carpeting of like character or description, printed on the warp or otherwise, 20 per centum ad valorem.

Paragraph 303 reads:

Mats, rugs for floors, screens, covers, hassocks, bed sides, art squares, and other portions of carpets or carpeting, composed wholly or in part of wool and not specially

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provided for in this section, shall be subjected to the rate of duty herein imposed on carpets or carpeting of like character or description.

This case was presented on full testimony, the importers' witnesses being men of experience, thoroughly conversant with the manufacture of rugs and carpets. Their testimony is in substantial agreement and is undisputed, and was not broken or weakened by a vigorous cross-examination by the Government attorney.

The evidence shows conclusively that Oriental, Berlin, Aubusson, and the original Axminster rugs are usually handmade, or hand tufted, high grade and expensive, and that they are made singly, one at a time. That also, similar to this group, there are other high-grade rugs, like Kildare and Donegal, that are usually handmade or hand tufted and made separately, one at a time. While the Brussels tapestry and Wilton belong to an entirely different class, and are always made by machine, and there are a variety of other differences in texture, make-up, composition, and style brought out by the witnesses, differentiating these rugs from the expensive high-class rugs mentioned in paragraph 300. That there are machine-made rugs which you might call imitation Axminster, and possibly also imitation Berlin, but they also differ essentially from the original handmade Axminster and Berlin, and are generally much inferior in quality, material, and price.

It is also shown by the testimony that art squares, one of the classes of articles treated as portions of carpets or carpeting in paragraph 303, are made exactly as these rugs are made, by producing on the loom a long stretch of carpeting with lines of demarkation occurring at intervals from which to cut the art squares.

It is plain that art squares could never come under paragraph 300, though the strips from which they are made are so divided that they could not be used for anything else. In this connection it seems clear that the process of manufacture, leaving lines of demarkation in the carpet strips from which to cut rugs, and only rugs, is not the kind of similarity referred to in paragraph 300.

Fundamentally, there is no difference between a rug and a carpet. The word "carpet" comes from the Latin word "carpita," meaning rug. In schedules similarly arranged in previous acts Congress recognized this and conformed to this idea by including rugs for floors among other portions of carpets or carpeting in paragraph 303 of the act of 1913, and its similar predecessors. However, in paragraph 300 something very different was evidently intended when the terms "Oriental, Berlin, Aubusson, Axminster, and similar rugs" were used.

Here the congressional intent was evidently to group together the very high-grade class and tax them at the highest rate of duty. These, from the fact that they are usually handmade and expensive,

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are generally made in the form of rugs. Hence, the term "rugs" is here used to convey a different meaning from the expression "rugs for floors" in paragraph 303, where the latter are assimilated to and taxed at the same rate as similar carpet material.

The testimony shows that the sample, Exhibit 1, covers Wilton rugs contained in bales 268, 272, 276, 282, 291, and that the other samples, Exhibits 2 to 6, illustrate the tapestry Brussels rugs in bale 292, and the protest is limited to these bales.

Further from the testimony the following facts appear:

(1) That the Wilton and tapestry Brussels rugs in question are made from portions of long rolls of Wilton and tapestry Brussels carpeting, respectively.

(2) That the material of which these rugs are made is manufactured entirely by machines in lengths of from 40 to 60 yards. The rolls are then cut into rugs or mats, the edges of which are turned back and the proper finish given to make them into completed rugs and mats.

(3) That the only difference between the Wilton and tapestry Brussels carpeting out of which carpets are made, and the Wilton and tapestry Brussels carpeting out of which rugs are made, is that when the rolls are intended to be cut into rug lengths the proper intervals are indicated by manipulation of the loom. Otherwise, the rolls would be identical whether to be cut into rugs or mats or not.

The evidence also conclusively shows that the merchandise here in question is not similar to Oriental, Berlin, Aubusson, and Axminster rugs, but consists of very different and much inferior materials.

Being excluded from paragraph 300, the merchandise here in dispute must be held to be within the purview of paragraph 303, which throws them into the corresponding carpet paragraphs 294 and 297.

Consequently, the Wilton should be classified at 30 per cent under paragraph 294 and the tapestry Brussels at 20 per cent under paragraph 297, as claimed in the protest.

In the case of the Keith Furniture & Carpet Co., G. A. 7606 (T. D. 34816), we held that certain rugs made from strips of 27-inch carpeting should be classified upon similar principles under the corresponding paragraphs of the act of 1909, and not under the paragraph corresponding to paragraph 300 of the present act. But nothing said in that decision would indicate that merchandise like the rugs here in question would be held to be similar to Oriental, Berlin, Aubusson, or Axminster rugs, simply because they are cut from a single strip of carpeting, and therefore seamless, instead of being made of two strips fastened together with a seam. In both cases they would be properly held to be made from carpets or carpeting.

The act of 1883 presented a somewhat similar situation, but not so strong a situation as the particularly phraseology of paragraph 300,

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compared with paragraph 303, makes in favor of the importer here. For in the act of 1883 the rug provision was broader and not limited to rugs similar to Oriental, Berlin, Aubusson, and Axminster, and yet, on principle, the case at bar, as well as the Keith Furniture & Carpet Co. case, just cited, come within the clear statement made by Mr. Justice White in Beuttell *v.* Magone (157 U. S., 154), where he said:

> We think the purpose of the statute, plainly conveyed by its text, was to tax carpets as enumerated therein. That the effect of its language and its intent were also to tax rugs made as rugs and clearly distinguishable as such by reason of their process of manufacture, size, shape, pattern, etc., at the duty imposed on rugs, but to *tax rugs made from pieces of carpets or carpeting* at the rate imposed on the carpet from which they were made, since, although answering the purpose of a rug, they were really carpeting itself, being made from parts or portions thereof. [Italics ours.]

In connection with the evidence presented in this case and the general conclusions reached as to the scope of the various paragraphs, it may be interesting to note that the book entitled "History and Manufacture of Floor Coverings," published by the Review Publishing Co., New York, in describing the method of manufacturing the so-called old-fashioned handmade Axminster, says (p. 46):

> The process of manufacture is slow, and the thick, heavy pile calls for a great amount of wool; consequently real Axminster carpets are extremely expensive. The demand for them, as with the Aubusson and Savonnerie carpets, comes from quarters where more importance is attached to quality than to price—large and fashionable hotels, club houses, royal palaces, and houses of the rich. The floor coverings known as Berlin carpets are similar to Axminsters.

The protest, in my opinion, should be sustained.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, MARCH 6, 1916.

No. 39334.—Protest 768377 of Chas. H. Wyman & Co. (St. Louis).

ROUGH LEATHER.—Merchandise invoiced as "harness backs," classified as "partly dressed leather" at 15 per cent ad valorem under paragraph 451, tariff act of 1909, is claimed dutiable at 5 per cent under the provision for rough leather in the same paragraph.

Opinion by MCCLELLAND, G. A. It was found that the merchandise consists of cow or steer hides, oak tanned, trimmed to sizes ranging from 48 to 50 inches wide and from 55 to 75 inches long, which before being adapted to use, are subjected to various finishing processes such as currying, soaking, greasing, tacking to frames to dry, and then smoothing with a knife. The hides in question were held dutiable as rough leather under paragraph 451, as claimed.

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No. 89335.—Protest 768374 of Missouri Belting Co (St Louis).

ROUGH LEATHER.—Merchandise classified as leather not specially provided for, at 15 per cent ad valorem under paragraph 451, tariff act of 1909, is claimed dutiable under the provision for rough leather in the same paragraph at 5 per cent.

Opinion by McCLELLAND, G. A. The merchandise was found to be the whole hides of either steers or cows trimmed to sizes of about 4 by 5 feet, and chrome tanned. It was found to be rough leather under the definition of that term in United States *v.* Robertson (1 Ct. Cust. Appls., 379; T. D. 31458). Protest sustained.

No. 89336.—Protest 768378 of Chas. H. Wyman & Co. (St. Louis).

BUFF LEATHER.—Merchandise invoiced as "unfinished horse butts," classified as dressed leather at 15 per cent ad valorem under paragraph 451. tariff act of 1909. is claimed dutiable at 5 per cent or 7½ per cent under paragraph 451 or 450.

Opinion by McCLELLAND, G. A. The horsehides which have been tanned and buffed were held dutiable at 7½ per cent under paragraph 450 as buff leather.

No. 89337.—Protest 790558 of Chas. H. Demarest (New York).

MOSS—GRASS.—Merchandise invoiced as moss and sea grass and classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable under the provision for moss and sea grass in paragraph 372 at 10 per cent.

Opinion by McCLELLAND, G. A. Protest unsupported; overruled.

No. 89338.—Protects 788153, etc., of Frank Woolsey Co. et al. (Portland, Oreg., and San Francisco).

FURNITURE OF GRASS AND WOOD.—Furniture classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable as manufactures of wood at 15 per cent under paragraph 176, or as sea grass, manufactured, at 10 per cent under paragraph 372.

Opinion by McCLELLAND, G. A. It was found that the furniture in question is in chief value of wood. It was held dutiable at 15 per cent under paragraph 176. Abstract 39130 followed.

No. 89339.—Protest 785977 of F. C. Griffin (Seattle).

TIMBERS—RAILROAD TIES.—Merchandise classified as railroad ties at 10 per cent ad valorem under paragraph 170, tariff act of 1913, is claimed to be timbers or bridge material, free of duty under paragraph 647 or 648.

Opinion by McCLELLAND, G. A. Protest unsupported; overruled.

No. 89340.—Protest 795136 of Cohen Co. (Norfolk).

LEATHER GLOVES.—Women's gloves classified as leather at $2 per dozen pairs under paragraph 363, tariff act of 1913, are claimed to be schmaschen, dutiable at $1 per dozen pairs under paragraph 362.

Opinion by McCLELLAND, G. A. It was found that the gloves are a mixed lot and impossible from the record to separate the lamb from the schmaschen. Protest overruled.

No. 89341.—Protest 794756 of Dingelstedt & Co. (New York).

SAPPHIRE POINTS FOR CUTTING TOOLS.—Flat pieces of real sapphire, polished and sharpened on two sides used in cutting tools such as chisels, etc., classified as a manufacture of semiprecious stones at 45 per cent ad valorem under paragraph 98, tariff act of 1913, were subsequently reported by the appraiser to be dutiable as a mineral substance, manufactured, at 20 per cent under paragraph 81.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* General Electric Co. (4 Ct. Cust. Appls., 287; T. D. 33494); the pieces of sapphire were held dutiable at 20 per cent under paragraph 81, as claimed.

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No. 39342.—Protest 772476 of Morris Goldberg's Sons (New York).

STEEL ORNAMENTS—JEWELRY.—Merchandise invoiced as steel ornaments and classified at 50 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed dutiable at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the steel ornaments in question were held dutiable under paragraph 167.

No. 39343.—Protests 770956, etc., of Sussfeld, Lorsch & Co. (New York).

PEDOMETERS.—Articles invoiced as pedometers are claimed dutiable as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913.

Opinion by SULLIVAN, G. A. Upon stipulation by counsel that the pedometers in question are of the same character as those covered by G. A. 7824 (T. D. 35949), they were held dutiable as manufactures of metal under paragraph 167, as claimed.

No. 39344.—Protests 561189, etc., of Fensterer & Ruhe (New York).

GLASS DOOR KNOBS.—Door knobs of glass classified at 60 per cent ad valorem under paragraph 93, tariff act of 1909, are reported by the appraiser in an amended return to be dutiable as manufactures of glass at 45 per cent under paragraph 109.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Heil (178 Fed., 537; T. D. 30492) and Abstract 24311, the door knobs in question were held dutiable under paragraph 109. Protests sustained in part.

No. 39345.—Protest 796309 of Mogi, Momonoi & Co. (New York).

EASTER BASKETS.—Small baskets of chip or bamboo, colored, ornamented with an artificial chick, rabbit, or duckling of cotton or other material, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 175.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7790 (T. D. 35796) the articles in question were held dutiable as baskets under paragraph 175.

No. 39346.—Protest 795661 of Sussfeld, Lorsch & Co. (New York).

TELESCOPES.—Telescopes of cardboard embossed, in three or more sectional parts, with metal rim and glass lens, which when extended are over a yard long, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as telescopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstract 38601, covering similar telescopes, the merchandise in question was held dutiable under paragraph 94, as claimed.

No. 39347.—Protests 796226, etc., of John De Buck et al. (New York).

ORCHID PLANTS—MOTHER BULBS.—Orchid plants are claimed free of duty as mother bulbs under the proviso to paragraph 210, tariff act of 1913.

Opinion by WAITE, G. A. Upon stipulation of counsel the orchid plants in question were held free of duty under paragraph 210. Maltus *v.* United States (6 Ct. Cust. Appls., —; T. D. 35920) followed.

BEFORE BOARD 1, MARCH 8, 1916.

No. 39348.—Protests 716901, etc., of Merck & Co. (New York).

CREOSOTE, SAPONIFIED—COAL-TAR PREPARATION.—Merchandise invoiced as creosote, saponified, classified as a coal-tar preparation at 20 per cent ad valorem under paragraph 15, tariff act of 1909, is claimed free of duty as sheep dip under paragraph 669.

Opinion by MCCLELLAND, G. A. The merchandise in question was held properly classified under paragraph 15. Merck *v.* United States (6 Ct. Cust. Appls., —; T. D. 35274) followed.

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No. 39349.—Protests 763240, etc., of Koken Barbers' Supply Co. et al. (St. Louis).

HORSEHIDE, PARTLY FINISHED.—These protests are against the classification of pieces of horsehide from 16 to 24 inches in length, tanned and partly finished, as manufactures of leather at 30 per cent ad valorem under paragraph 360, tariff act of 1913.

Opinion by MCCLELLAND, G. A. It was found that after importation these pieces of leather are subjected to further processes of finishing or manufacture before being made into razor strops, for which purpose they are ultimately used. On the authority of G. A. 7855 (T. D. 36164) they were held dutiable as unenumerated manufactured articles under paragraph 385. Protests overruled, that claim not having been made.

No. 39350.—Protest 797777 of E. Stegemann, jr. (New York).

GLOVE LEATHER.—Merchandise classified as glove leather at 10 per cent ad valorem under paragraph 359, tariff act of 1913, is claimed to be free of duty under paragraph 530, 603, or 604.

Opinion by MCCLELLAND, G. A. Upon stipulation of counsel certain items invoiced as lambskins, white, were held entitled to free entry under paragraph 530. Abstract 38494 followed.

No. 39351.—Protest 776087 of C. Bahnsen & Co. (New York).

LEATHER PICKER STRAPS.—Leather picker straps about 1 inch wide and from 30 to 36 inches in length, classified as manufactures of leather at 30 per cent ad valorem under paragraph 360, tariff act of 1913, are claimed free of duty under paragraph 530, or dutiable under paragraph 385.

Opinion by MCCLELLAND, G. A. On the authority of G. A 7855 (T. D. 36164) the leather straps in question were held dutiable as articles manufactured in whole or in part at 15 per cent under paragraph 385.

No. 39352.—Protests 766733, etc., of Taylor Hobson Co. (New York).

COOKE'S PRISMS—CAMERA PARTS—OPTICAL INSTRUMENTS.—Merchandise classified under the provision for optical instruments and frames and mountings, in paragraph 93, tariff act of 1913, at 35 per cent ad valorem, is claimed dutiable as photographic cameras and parts, at 15 per cent under paragraph 380, or as photographic lenses and frames and mountings for the same, at 25 per cent under paragraph 94.

SULLIVAN, *General Appraiser:* * * * The merchandise in question consists of so-called "Cooke process prisms." The official sample is composed of metal into which are set two lenses and a mirror. It is in the shape of a triangular prism, the back and two sides being entirely of metal, a lens being set in each of the two faces and a mirror attached to the back inside the article, so that an object reflected on the mirror through one lens is seen inverted in the mirror by looking through the other lens.

The record establishes that this instrument is a prism, with refractive and reflective qualities, used by photo-engravers and commercial photographers for reversing the image and in commercial photography to enable the photographer to photograph objects lying on a horizontal plane, which obviates the necessity of suspending the camera over the object, as in photographing a collection of gems or other small articles on a flat surface, such as a table.

The testimony further establishes that by the use of this prism the light is bent and the image reversed; that it has no other use except for a part of a camera for photo-engraving, and that for color work its use is absolutely essential. * * *

The evidence establishes that this instrument is a part of a camera, always attached to a camera, and never taken off. It has no use in its present condition. All cameras that are used for color work have the prisms attached permanently. Unquestionably it is part of a camera and not a projecting lens.

In the matter of protests 752181, etc., of J. Bliss & Co. et al., G. A. 7697 (T. D. 35220), we defined an optical instrument as something to be used as an aid to sight or the eye. This instrument does not fall within that definition. In that case we

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had before us for classification certain nautical instruments assessed as optical instruments and claimed manufactures of metal, not specially provided for. We sustained the protests and were affirmed by the Court of Customs Appeals in United States *v.* Bliss (6 Ct. Cust. Appls., 433; T. D. 35980). In its opinion the court very fully elaborated on the subject of optical instruments.

It seems to us that this merchandise, from the testimony, naturally falls within paragraph 380, which covers photographic cameras and parts thereof, not specially provided for, and fixes a duty thereon of 15 per cent ad valorem. We so hold.

The protests are sustained and the collector's decision reversed in each case.

No. 39853.—Protest 795841 of A. H. Ringk & Co. (New York).

CASHMERE NOILS—WOOL WASTE.—Cashmere noils classified at 15 per cent ad valorem under paragraph 305, tariff act of 1913, are claimed free of duty as wool waste under paragraph 651.

Opinion by BROWN, G. A. On the authority of Abstracts 38198 and 38806 cashmere noils were held free of duty under paragraph 651, as claimed.

No. 39854.—Protest 773283 of Favor, Ruhl & Co. (New York).

LINSEED OIL—VARNISH.—Linseed oil and varnishes put up in bottles of less than 2½ pounds gross weight, classified as chemical compounds at 20 per cent ad valorem under paragraph 17, tariff act of 1913, are claimed dutiable at 10 cents per gallon under paragraph 45, and 10 per cent ad valorem under paragraph 58, respectively.

Opinion by BROWN, G. A. On the authority of Abstracts 37926 and 38225 linseed oil was held dutiable under the provision therefor in paragraph 45, and the varnish under paragraph 58, as claimed.

No. 39855.—Protests 526447, etc., of R. H. Macy & Co. et al. (New York).

FISH IN TINS.—Merchandise classified as fish in tins at 30 per cent ad valorem under paragraph 270, tariff act of 1909, is claimed to be dutiable at 1 cent or 1¼ cents per pound under paragraph 273, or at 1½ cents per package under paragraph 270.

Opinion by BROWN, G. A. Protests unsupported; overruled.

No. 39856.—Protests 785331, etc., of Scandinavian Importing Co. et al. (Boston and New York).

FISH IN TINS.—Merchandise classified as fish in tins in oil at 25 per cent ad valorem and as fish in tins not in oil at 15 per cent under paragraph 216, tariff act of 1913, is claimed dutiable as fish, skinned or boned, at three-fourths of 1 cent per pound under the same paragraph. It is also claimed that the fish classified as in oil is dutiable at 15 per cent as fish in tins not in oil, under paragraph 216.

Opinion by BROWN, G. A. Protests unsupported; overruled. Tokstad *v.* United States (6 Ct. Cust. Appls., 441; T. D. 35981) and G. A. 7721 (T. D. 35366) cited.

BEFORE BOARD 2, MARCH 8, 1916.

No. 39857.—Protest 784758 of Lunham & Moore (New York).

STEEL NAILS WITH BRASS-PLATED HEADS.

FISCHER, *General Appraiser*: The articles in question consist of nails of two classes, one composed entirely of steel except that the heads have been dipped in brass, while in the other the shanks are of steel and the heads of solid brass. Duty was levied on both classes at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for, and they are claimed to be properly entitled to free entry under the provision in paragraph 554 of said act for "wrought iron or steel nails not specially provided for." At the hearing the protest was limited to cover only the nails with brass-plated heads.

Without the aid of argument or briefs, we presume that this claim is disputed by the Government on the ground that the provision invoked by the importers contem-

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plates only such nails as are not elsewhere specially provided for which are composed wholly of wrought iron or steel, and that the nails in question, by reason of the brass plating thereon, are necessarily excluded from said provision.

This board and the courts have uniformly held that a provision for an article composed of a certain material includes such article if composed wholly or in chief value of such material. Where, however, there are two or more components in the article, one of which is of chief value, the latter fact should be established by competent proof. In this case the nails are plated with brass, and it therefore can not be claimed that they are composed wholly of steel. Consequently, it was at least incumbent upon the importers to prove the component material of chief value, and their failure so to do has defeated their claim.

The protest is overruled.

No. 39358.—Protests 746591, etc., of Edward Zinn (New York).

TREE TRIMMERS—PRUNING SHEARS—HEDGE SHEARS.—Tree trimmers, pruning shears, and hedge shears composed of metal, classified as shears at 30 per cent ad valorem under paragraph 128, tariff act of 1913, are claimed to be entitled to free entry as agricultural implements under paragraph 391.

Opinion by FISCHER, G. A. It was found that the record did not establish that the articles in question are agricultural implements within the meaning of paragraph 391 as interpreted in United States *v.* Boker (6 Ct. Cust. Appls., 243, T. D. 35472). Protests overruled.

No. 39359.—Protest 788093 of Snow's United States Sample Express Co. (New York).

TUCKED WEARING APPAREL—Collars, shirts, shirt bosoms, and blouses, composed of cotton, or flax and cotton, and ornamented with loom woven or pleated tucks, classified as articles in part of tuckings, cotton wearing apparel appliquéd with tuckings, and embroidered wearing apparel, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 256, 266, or 258 or at 40 per cent under paragraph 278.

Opinion by COOPER, G. A. The merchandise classified as embroidered wearing apparel, found to consist of cotton shirts not embroidered, the tucked shirts, shirt bosoms and blouses, and the cotton collars, were held dutiable at 30 per cent under paragraph 256. Abstract 38363 cited. Protest sustained in part.

No. 39360.—Protest 787446 of Mills & Gibb (New York).

TUCKED COTTON COLLARS AND CUFFS—EMBROIDERED WEARING APPAREL.—Cotton collar and cuff sets and cotton collars made in part of tuckings, women's collars, and other articles of wearing apparel composed of cotton or other materials embroidered or trimmed with lace, and silk hair nets, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 256.

Opinion by COOPER, G. A. On the authority of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), the cotton collar and cuff sets and cotton collars in question were held dutiable at 30 per cent under paragraph 256. Protest overruled as to the embroidered collars and other articles of wearing apparel trimmed with lace, and the silk hair nets. G. A. 7644 (T. D. 34930) and G. A. 7570 (T. D. 34494) followed.

No. 39361.—Protests 779440, etc., of A. L. Reid & Co. et al. (New York).

FIGURED COTTON CLOTH.—Merchandise classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton cloth woven figured under paragraph 252.

Opinion by COOPER, G. A. On the authority of United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), affirming G. A. 7618 (T. D. 34858), the figured cotton cloth was held dutiable at the appropriate rate under paragraph 252, as claimed.

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No. 39362.—Protest 767703 of C. H. Wyman & Co. (St. Louis).

EMBROIDERED AND APPLIQUÉD COTTON CLOTH.—Merchandise classified as embroidered and appliquéd cotton cloth at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. Protest submitted upon official samples without further evidence, overruled.

No. 39363.—Protests 761779, etc., of Lord & Taylor et al. (New York).

EMBROIDERED HOSIERY.—Embroidered cotton stockings classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 260, or at 20 per cent under paragraph 259.

Opinion by COOPER, G. A. The stockings in question were held properly classified under paragraph 358. G. A. 7644 (T. D. 34930) followed.

No. 39364.—Protests 736794, etc., of Wm. H. Stiner & Son et al. (New York).

IMITATION ASTRAKHANS—PILE FABRICS.—Merchandise consisting of imitation astrakhans composed of cotton and jute with an uncut pile covering practically the entire surface, classified as cotton or jute pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, is claimed dutiable as manufactures of cotton or of vegetable fiber, under paragraph 266 or 284.

Opinion by COOPER, G. A. On the authority of Abstract 36495 (T. D. 34774), affirmed in Knauth *v.* United States (6 Ct. Cust. Appls., 128: T D. 35389), the imitation astrakhans were held properly classified under paragraph 257.

BEFORE BOARD 3, MARCH 8, 1916.

No. 39365.—Protests 788343-57547 of G. W. Sheldon & Co. (Chicago).

BETEL NUTS—ARECA NUTS.

WAITE, *General Appraiser:* The merchandise in question is invoiced as betel nuts, and has been assessed under the provision in paragraph 226, tariff act of 1913, for "nuts of all kinds, shelled or unshelled, not specially provided for." It is claimed to be free of duty under paragraph 477 as a crude drug, or dutiable under paragraph 385 as an unenumerated unmanufactured article.

The commodity as presented before us has a hard, woody body resembling somewhat a nutmeg in appearance. The principal question is whether it is a nut or a seed. If it should be classified as a seed it would be free of duty, in our judgment, as claimed by the importers, under paragraph 477, as we are of the opinion it is medicinal in its nature and is used for compounding medicines. It is in its crude state. Upon the question, however, whether it is a nut or a seed, the testimony upon which to base a conclusion is unsatisfactory. The testimony indicates that it is botanically known as "*Areca catechu.*" In the "Treasury of Botany" (London, 1889, pt. 1, at p. 88) we find the following under the head of "Areca":

> *A. Catechu* is a handsome tree, cultivated in all the warmer parts of Asia for the sake of its fruits, which are of the size of a hen's egg, of a reddish yellow color, and with a thick fibrous rind, within which is the seed. This is known under the name of Areca nut, Pinang, and betel nut, and is about the size of a nutmeg, but conical in shape, flattened at the base, brownish externally, and mottled internally like a nutmeg. These nuts are cut into narrow pieces, which are rolled up with a little lime in leaves of the Betel pepper.

The article goes on to state that this is chewed by the natives and consumed in large quantities. The testimony shows that the importation is for the purpose of extracting a drug or medicine.

The New International Encyclopædia (vol. 1, p. 766) practically confirms what we have quoted above. It says:

> *Areca.*— * * * The fruit in a fibrous one-seeded drupe, a nut with an outer fibrous husk. *Areca catechu*, the Pinang palm, or betel-nut palm, is a native of the East Indies, whose nut yields a sort of catechu. This areca nut, or betel nut, is very

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much used in all parts of the East, the chewing of it with quicklime and the leaf of the betel pepper being one of the most prevalent habits of the people.

Apparently this is the pit of the drupaceous fruit. An examination of the specimen before us, which is very much dried, shows it to be a thick, hard, woody substance, somewhat cellular in its internal formation, the cells or lines radiating from a point near the base where the kernel, the germinating part of the pit, is situated. We do not think it conforms to the ordinary description or structure of a seed, as that term is used in the tariff.

The same commodity was before the board in the case of Anderson & Co., G. A. 7773 (T. D. 35704), where the question of its inclusion as a nut under paragraph 477 was fully discussed. We agree with the opinion expressed there and conclude that the decision in that case should govern in this. The protest is therefore overruled.

No. 39366.—Protest 790009 of Fanti Bros. (New York).

WEIGHT OF CHEESE.—It is claimed that an excessive weight of cheese was taken by the collector as the basis for the levying of duty, the contention being that there was a shrinkage between the time of exportation and landing in this country.

WAITE, *General Appraiser:* * * * The levy of duty seems to have been upon the landed weight reported by the Government weigher minus the tare mentioned in the invoice. The board has held that duty should be assessed upon the quantity of cheese liable thereto as reported by the Government weigher. Note Coroneos Bros. case, G. A. 7866 (T. D. 36194), protests 765348, etc. In order to arrive at this amount the commodity must necessarily be tared, and we see no reason for holding that the importer is bound by the Government weigher's report of gross and the invoice amount of tare. In our judgment, both the gross weight and the tare reported by the Government weigher should be taken; and the tare deducted from the gross weight will give the net weight, upon which duty should be assessed at the appraised value.

The appraised value in this case seems to have been 1.50 francs per oke, which is the same as the entered value. The appraiser, however, has added an item of freight. No mention is made of this in the brief of the importers. If it was subject to correction it should have been corrected on a reappraisement proceeding. We conclude, therefore, that the addition reported by the appraiser was correct, and duty at 20 per cent ad valorem under paragraph 196, act of 1913, should be assessed upon the value of the net amount of cheese reported by the Government weigher, to which should be added the item of freight and the packing charge. The protest is sustained to that extent.

No. 39367.—Protests 787514, etc., of Greek Wholesale Groceries Co. et al. (New York).

WEIGHT OF CHEESE IN BRINE.—It is claimed in these protests that duty was assessed upon an excessive weight of cheese in brine. A motion was made to dismiss the protests because they did not specify the excess weight.

Opinion by WAITE, G. A. The protests were held sufficient on the authority of G. A. 7867 (T. D. 36195). It was found that cheese in brine shrinks in weight in transportation, which accounts for the discrepancy between the landed weight and the invoice weight. The net landed weight reported by the Government weigher is less than the invoice weight. It was held that the report of the Government weigher should be accepted. G. A. 7866 (T. D. 36194) and G. A. 7867 (T. D. 36195) noted. The appraiser made an advance by adding an item of freight on each invoice. This advance added to the net amount of the cheese reported by the Government weigher, plus the packing charge, was held to determine the amount upon which duty should be assessed.

No. 39368.—Protests 787379–6269, etc., of Illinois Central Railroad Co. (New Orleans).

VALUE.—It is claimed that the value of drums containing copra oil should have been returned as entered. It appears that the value of the drums was advanced by the appraiser and additional duty assessed.

Opinion by WAITE, G. A. The protests, raising a question of value, were dismissed.

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BEFORE BOARD 1, MARCH 10, 1916.

No. 39369.—Protests 778991, etc., of Bloomingdale Bros. (New York).

TOILET PREPARATION—SUFFICIENCY OF PROTEST.—These protests are against the classification of small circular paper boxes containing a wool powder puff and a block of face powder, as toliet preparations at 60 per cent under paragraph 48, tariff act of 1913.

Opinion by MCCLELLAND, G. A. The protests were dismissed for the reason that the claims made are multifarious and most of them widely inconsistent. G. A. 7849 (T. D. 36117) and Zimmerman *v.* United States (1 Ct. Cust. Appls., 79; T. D. 31105) cited.

No. 39370.—Protests 789944, etc., of F. H. Bailey (El Paso).

SHOOKS—LUMBER.—Merchandise invoiced as box shooks, classified as manufactures of wood at 15 per cent ad valorem under paragraph 176, tariff act of 1913, is claimed free of duty under the provision for shooks in paragraph 647.

Opinion by MCCLELLAND, G. A. It was found that shooks, parts of shooks, and lumber were indiscriminately mixed. Protests overruled.

No. 39371.—Protest 774858–56046 of Gage Bros. & Co. (Chicago).

HATPINS—JEWELRY.—Hatpins in chief value of cut glass, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. The hatpins in question have blued steel shanks with heads of glass or paste, pear or globular shaped. They were found to be in chief value of cut glass. Protest overruled.

No. 39372.—Protest 776242 of Lamont, Corliss & Co. (New York).

CLEANING PREPARATION.—The appraiser described the merchandise as white cleaner, a preparation for cleaning boots. It was classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, and is claimed dutiable at 15 per cent under paragraph 11.

Opinion by BROWN, G. A. The white cleaner in question was held dutiable under paragraph 11. Abstracts 37926, 37931, and 38346 followed.

No. 39373.—Protest 775288 of Farbwerke-Hoechst Co. (New York).

BROMINATED INDIGO.—Merchandise invoiced as indigo bromate, classified as a coal-tar color at 30 per cent ad valorem under paragraph 20, tariff act of 1913, is claimed free of duty under the provisions of paragraph 514.

Opinion by BROWN, G. A. It was found that the merchandise is a dye derived from indigo. It was held free of duty under paragraph 514, as claimed.

BEFORE BOARD 2, MARCH 10, 1916.

No. 39374.—Protests 763747, etc., of Rothschild, Meyers & Co. (New York).

HOLLOW WARE—ENAMELED IRON OR STEEL ARTICLES—POT COVERS—ENTIRETIES.—Articles composed of enameled iron or steel, classified as hollow ware at 25 per cent ad valorem under paragraph 134, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Ladles, spoons, skimmers, scale pans, and pot covers were held dutiable under paragraph 167, as claimed. G. A. 7662 (T. D. 35049) and Abstract 38060 followed.

FISCHER, *General Appraiser:* * * * In a brief filed with the papers in the case, counsel for the Government contends that all of the pot covers on the invoices covered by these protests, irrespective of whether they may have been imported as separate dutiable entities or as parts of accompanying pots, should be classified as entireties under the provision for hollow ware in said paragraph 134.

It is a fundamental rule of customs law that imported merchandise must be treated for classification purposes in the precise condition in which it arrives in this country.

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The pot covers enumerated on the annexed schedule in their imported condition are complete dutiable entities and form no part of any other article in the same shipment. It is true that they are incapable of use separate and apart from the hollow utensils for which they have been made, and to that extent may be deemed to properly constitute parts of hollow-ware utensils. But they can not be so classified under the existing tariff law, first, because they form no part of any particular article in the same shipment, and, secondly, because there is no tariff provision for parts of hollow-ware utensils. For these reasons, and because they are composed of iron or steel, the covers in question are held properly classifiable as manufactures of metal not specially provided for under paragraph 167. * * *

No. 39375.—Protest 744828–51677 of Vaughan's Seed Store (Chicago).

PRUNING SHEARS—AGRICULTURAL IMPLEMENTS.—Merchandise invoiced as branch pruners, garden shears, border shears, lawn shears, and hedge clippers, classified as shears at 30 per cent ad valorem under paragraph 128, tariff act of 1913, is claimed entitled to free entry as agricultural implements under paragraph 391.

Opinion by FISCHER, G. A. The articles in question were not established to be agricultural implements as defined in United States *v.* Boker (6 Ct. Cust. Appls., —; T. D. 35472). Protest overruled.

No. 39376.—Protests 783005, etc., of S. Ontra & Bro. (New York).

DRAWNWORK HANDKERCHIEFS AND WEARING APPAREL.—Handkerchiefs, waists, waist fronts, and other wearing apparel composed of cotton and ornamented with drawnwork, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 255 or 256.

Opinion by COOPER, G. A. The cotton handkerchiefs in question were held dutiable under paragraph 255, and the waists, waist fronts, and other wearing apparel ornamented with drawnwork under paragraph 256. G. A. 7769 (T. D. 35675) followed.

No. 39377.—Protests 771257, etc., of American & European Forwarding Co. et al (New York).

TUCKED WEARING APPAREL.—Shirt bosoms and blouses of cotton, or flax and cotton, ornamented with loom-woven or pleated tucks, some embroidered, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 256.

Opinion by COOPER, G. A. On the authority of Abstract 38363, tucked wearing apparel not embroidered was held dutiable under paragraph 256. Protests overruled as to the embroidered articles

No. 39378.—Protests 750687, etc., of G. W. Sheldon & Co. et al. (New York).

FLAX CRASH.—Linen crash classified at 35 per cent ad valorem under paragraph 284, tariff act of 1913, is claimed to be plain woven, dutiable at 30 per cent under paragraph 283.

Opinion by COOPER, G. A. On the authority of United States *v* Douglas (6 Ct. Cust. Appls., 100; T. D. 35342) the crash in question was held not to be plain woven, but dutiable under paragraph 284, as classified

No. 39379.—Protest 774274 of Montgomery Ward & Co. (St. Louis).

SLIPPERS IN CHIEF VALUE OF LEATHER.—Slippers composed of cotton and leather, classified as manufactures of cotton at 30 per cent ad valorem under paragraph 256, tariff act of 1913, are claimed to be in chief value of leather, free of duty under paragraph 530.

Opinion by COOPER, G. A. The claim for free entry under paragraph 530 was sustained as to such slippers as were found to be in chief value of leather. Abstract 31997 (T. D. 33348) and Abstract 35693 (T. D. 34468) followed.

No. 39380.—Protest 775312 of Thos. Meadows & Co. (New York).

SLIPPERS OF COTTON AND WOOL.—Cotton slippers and wool slippers with silk ornaments, classified at 60 per cent ad valorem under paragraph 358, tariff act of

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1913, are claimed dutiable as cotton wearing apparel at 30 per cent under paragraph 256, or as wool wearing apparel at 35 per cent under paragraph 291.

Opinion by COOPER, G. A. The cotton slippers in question were held dutiable under paragraph 256 and the wool slippers under paragraph 291, on the authority of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823).

No. 39381.—Protest 786740 of J. J. Gavin & Co. (New York).

STRAW SLIPPERS.—Slippers of straw, lined and ornamented with cotton terry cloth, classified as cotton wearing apparel at 30 per cent ad valorem under paragraph 256, tariff act of 1913, are claimed to be straw chief value, dutiable at 25 per cent under paragraph 368.

Opinion by COOPER, G. A. The slippers in question were found to be composed in chief value of straw and held dutiable under paragraph 368, as claimed. Abstract 34599 (T. D. 34127) followed.

No. 39382.—Protest 786937 of A. L. Reid & Co. (New York).

DRAWNWORK QUILTS.—Cotton quilts ornamented by drawnwork, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as quilts of cotton at 25 per cent under paragraph 264, or at 30 per cent under 266 or 258.

Opinion by COOPER, G. A. The quilts in question were held more specifically provided for in paragraph 264 than in paragraph 358. G. A. 7769 (T. D. 35675) followed.

BEFORE BOARD 3, MARCH 10, 1916.

No. 39383.—Protest 788179 of D. McNellis (St. Louis).

ADDITIONAL DUTY.—This protest is against the assessment of additional duty for undervaluation.

Opinion by WAITE, G. A. Protest unsupported; overruled.

No. 39384.—Protest 783595 of L. Avanzino & Bro. (Boston).

ENTERED VALUE—PRO FORMA INVOICE.—Certain merchandise was entered on a pro forma invoice, the per se values of which were approved on appraisal. The values stated in the consular invoice, which was subsequently received, were higher and the collector liquidated on that basis. This protest is against the payment of additional duties.

Opinion by WAITE, G. A. Protest overruled on the authority of United States *v.* Hobbs (3 Ct. Cust. Appls., 256; T. D. 32567).

(T. D. 36230.)

Beaded and spangled trimmings.

Appeal directed from decision of the Board of United States General Appraisers of January 31, 1916, G. A. 7850 (T. D. 36141), involving the classification of certain beaded and spangled trimmings.

TREASURY DEPARTMENT, *March 13, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 6th instant inviting attention to the decision of the Board of United States General Appraisers of January 31, 1916, G. A. 7850 (T. D. 36141), covering certain trimmings composed of silk netting, ornamented with beads and spangles.

It appears that the silk netting was of greater value than either the beads or spangles taken separately, although the beads and span-

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gles taken together were of greater value than the silk netting. The merchandise was assessed with duty at the rate of 60 per cent ad valorem under paragraph 358 of the tariff act of 1913, but the board held it to be dutiable at the rate of 50 per cent ad valorem under paragraph 333 of the said act.

In accordance with your recommendation, you are hereby authorized to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(100832.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36231.)

Imported merchandise.

Appeal directed from decision of the Board of United States General Appraisers of February 23, 1916, G. A. 7862 (T. D. 36190), relative to the assessment of duty on a certain mail car as imported merchandise.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 8th instant, relative to the decision of the Board of United States General Appraisers of February 23, 1916, G. A. 7862 (T. D. 36190), wherein a certain railway mail car used on an international railway and subsequently retained for a time in this country for use between two points in the United States, which car had been assessed with duty under paragraph 167 of the tariff act of 1913, was held by the board not to be subject to duty as imported merchandise.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(61700.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36232.)

Drawback on cotton cloths.

Drawback on cotton cloths manufactured by the Paul Whitin Manufacturing Co., of Northbridge, Mass., in whole or in part with the use of imported cotton yarns.

TREASURY DEPARTMENT, *March 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cotton cloths

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manufactured by the Paul Whitin Manufacturing Co., of Northbridge, Mass., in whole or in part with the use of imported cotton yarns.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, which will show, in the case of each lot of cotton cloth manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and kind of cloth produced, and the quantity, kind, and identity of imported cotton yarn and the quantity and kind of domestic yarn appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported cotton yarn appearing in the exported cotton cloth, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated February 17, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on cotton cloths exported on or after December 30, 1915.

Respectfully, WM. P. MALBURN,
(104534.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36233.)

Drawback on medicinal and toilet preparations, etc.

Drawback on medicinal and toilet preparations and flavoring extracts manufactured by Sharp & Dohme, of Baltimore, Md., with the use of domestic tax-paid alcohol.—T. D. 29829 of June 10, 1909, T. D. 30257 of January 12, 1910, T. D. 30561 of April 22, 1910, T. D. 31472 of April 8, 1911, and T. D. 34286 of March 19, 1914, revoked.

TREASURY DEPARTMENT, *March 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on medicinal and toilet preparations and flavoring extracts manufactured by Sharp & Dohme, of Baltimore, Md., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported medicinal and toilet preparations or flavoring extracts, as shown by the sworn statement and schedule of the manufacturers, dated December 10, 1915, which is transmitted herewith for filing in your office.

Supplemental sworn statements and schedules showing changes in the quantity of domestic tax-paid alcohol appearing in the exported preparations or extracts or covering other medicinal and toilet preparations and flavoring extracts may be filed, and upon verification of such supplemental statements and schedules drawback may be allowed on the preparations and extracts covered thereby.

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There is also inclosed herewith a supplemental sworn statement of the manufacturers, dated February 14, 1916.

T. D. 29829 of June 10, 1909, T. D. 30257 of January 12, 1910, T. D. 30561 of April 22, 1910, T. D. 31472 of April 8, 1911, and T. D. 34286 of March 19, 1914, are hereby revoked.

Respectfully, WM. P. MALBURN,
(72681.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36234.)

Drawback on chewing gum.

Drawback on chewing gum manufactured by the R. E. Reedy Gum Co., of Chicago, Ill., with the use of imported crude gum chicle and refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on chewing gum manufactured by the R. E. Reedy Gum Co., of Chicago, Ill., with the use of imported crude gum chicle and refined sugar produced in whole or in part from imported raw sugar.

A record shall be kept by the manufacturers, which shall show, in the case of each lot of chewing gum manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantities and identity of the imported crude chicle and refined sugar used, the quantity and brand name of the chewing gum produced, the quantity and character of waste incurred, and the value of such waste, if any. Each lot of chewing gum shall be so stored or marked as to retain its identity with the imported materials used in its manufacture. An abstract from the above manufacturing record shall be filed with each drawback entry.

The quantities of imported crude gum chicle and refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantities used in the manufacture of the exported chewing gum, as shown by the abstracts from the manufacturing record.

The sworn statements of the manufacturers, dated November 3, 1915, and February 26, 1916, are transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on chewing gum exported on and after January 13, 1916.

Respectfully, WM. P. MALBURN,
(104484.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36235.)

Drawback on dates.

Drawback on plain sterilized dates and sterilized pitted dates produced by Palmer & Pierce, of New York, N. Y., from dates imported in bulk.—T. D. 32904 of November 1, 1912, and T. D. 35090 of January 27, 1915, revoked.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on plain sterilized dates and sterilized pitted dates produced by Palmer & Pierce, of New York, N. Y., from dates imported in bulk.

A record shall be kept, which will show, in the case of each lot of dates produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity, value, and identity of the imported dates used, the quantity of sterilized or sterilized and pitted dates obtained, the quantities of worthless and valuable waste incurred, the value of the valuable waste, the number of cartons of dates obtained, the net weight of the dates appearing in the cartons, and the brand name thereof. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported dates appearing in the exported plain sterilized or sterilized and pitted dates, with an addition to compensate for waste incurred, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported dates which the value thereof will replace.

The sworn statement of the manufacturers, dated February 26, 1916, is transmitted herewith for filing in your office.

T. D. 32904 of November 1, 1912, and T. D. 35090 of January 27, 1915, are hereby revoked.

Respectfully, WM. P. MALBURN,
(94654.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36236.)

Drawback on carding machinery.

Drawback on carding machinery manufactured by Leigh & Butler, of Boston, Mass., with the use of various imported articles and materials.—T. D. 16068 of May 25, 1895, and T. D. 31435 of April 12, 1911, revoked.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on clothed iron flats and carding-engine rollers for carding machines manufactured by Leigh & Butler, of Boston, Mass., with the use of imported iron flats, steel clips, end plates, carding-engine rollers, licker-in wire, and card clothing in the manner described in their sworn statement of March 4, 1916, which is transmitted herewith for filing in your office.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, above referred to, which will show, in the case of each article manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the character of the article produced, and the quantity of each kind of imported material appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported material of each kind appearing in the exported articles, as shown by the abstract from the manufacturing record.

T. D. 16068 of May 25, 1895, and T. D. 31485 of April 12, 1911, are hereby revoked.

Respectfully, WM. P. MALBURN,
(8629g.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36237.)

Drawback on fishing gill nets.

Drawback on fishing gill nets manufactured by the W. & J. Knox Net & Twine Co., of Baltimore, Md., with the use of imported gilling thread.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on fishing gill nets manufactured by the W. & J. Knox Net & Twine Co., of Baltimore, Md., with the use of imported gilling thread.

A manufacturing record shall be kept, which will show, in the case of each lot of fishing gill nets manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of gill nets produced, the dimensions and weight thereof, the quantity, value, and identity of the imported gilling thread appearing therein, and, if an allowance for waste is to be claimed, the quantity and value of the waste incurred. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

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The allowance shall not exceed the quantity of imported gilling thread appearing in the fishing gill nets exported, with an addition to compensate for waste, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported gilling thread which the value thereof will replace.

The sworn statement of manufacturers, dated February 8, 1916, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(102789.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 36238.)

Drawback on confectionery.

Drawback on confectionery manufactured by the Farley Candy Co., of Chicago, Ill. with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chap. 18 of the Customs Regulations of 1915) on confectionery manufactured by the Farley Candy Co., of Chicago, Ill., with the use of refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept, which will show, in the case of each lot of confectionery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and kind of confectionery manufactured, and the quantity and identity of the refined sugar appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported confectionery, as shown by the abstract from the manufacturing record, with a maximum of the quantity shown in the sworn statement of manufacture, dated February 14, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules showing changes in quantities of refined sugar used or covering other kinds of confectionery may be filed, and upon verification of such supplemental schedules drawback may be allowed on the confectionery covered thereby.

Respectfully, WM. P. MALBURN,
(100732–4.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36239.)

Drawback on hosiery.

T. D. 35429 of May 24, 1915, extended to cover hosiery manufactured by William G. Leininger, of Mohnton, Pa., with the use of imported artificial silk.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: The department's regulations of May 24, 1915 (T. D. 35429), providing for drawback on hosiery manufactured by Thompson Bros., of Milroy, Pa., are hereby extended to cover hosiery manufactured by William G. Leininger, of Mohnton, Pa., with the use of imported artificial silk.

The sworn statement of the manufacturer, dated February 25, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on hosiery exported on or after November 9, 1915.

Respectfully, WM. P. MALBURN,
(95187–23.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36240.)

Drawback on steam turbines, etc.

Drawback on steam turbines, steam-turbine machinery, and parts of the same manufactured by the De Laval Steam Turbine Co., of Trenton, N. J., with the use of imported turbine wheels and other parts.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on steam turbines, steam-turbine machinery, and parts of the same manufactured by the De Laval Steam Turbine Co., of Trenton, N. J., with the use of imported turbine wheels and other parts.

A manufacturing record shall be kept, which will show, in the case of each article manufactured for exportation with benefit of drawback, the character of the article and the date of manufacture thereof, the number, character, condition, value, weight, and identity of the imported parts used in the manufacture thereof, the finished weight of such parts, and the quantity and value of the waste incurred. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported material used in the manufacture of the exported article, as shown by the abstract from the manufacturing record, the allowance for waste to

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be reduced according to the quantity of imported material which the value thereof will replace.

The sworn statements of the manufacturers, dated November 20, 1915, and February 16, 1916, are transmitted herewith for filing in your office.

T. D. 31190 of February 9, 1911, is hereby revoked.

Respectfully, WM. P. MALBURN,
(22799.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36241.)

Blades for pocketknives and razors.

Appeal directed from decisions of the Board of United States General Appraisers, Abstracts 39191, 39239, and 39313, involving the classification of certain blades for pocketknives and razors.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 6th instant inviting attention to certain decisions of the Board of United States General Appraisers, Abstracts 39191, 39239, and 39313, wherein certain blades for pocketknives and razors which had been assessed with duty at the rate of 55 per cent ad valorem as blades for pocketknives or razors valued at more than $1 per dozen knives or razors, under paragraph 128 of the tariff act of 1913, were held by the board to be dutiable at the rate of 20 per cent ad valorem as manufactures of metal under paragraph 167 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Custom Appeals for a review of the said decisions, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(97103.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36242.)

Drawback on Pond's Extract.

T. D. 35685 of August 27, 1915, amended to provide for the filing of supplemental schedules.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: The department's regulations of August 27, 1915 (T. D. 35685), providing for drawback on Vanishing Cream and Pond's

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Extract, manufactured by the Pond's Extract Co., of New York, N. Y., are hereby amended to provide that supplemental sworn schedules showing changes in the quantity of domestic tax-paid alcohol used in the manufacture of Pond's Extract may be filed and that upon verification of such supplemental schedules drawback may be allowed on Pond's Extract manufactured in accordance therewith.

I inclose herewith for the files of your office a supplemental schedule of the said company, dated February 21, 1916, covering the above preparation.

Drawback may be allowed on Pond's Extract manufactured in accordance with the schedule of February 21, 1916, exported on or after December 23, 1915.

Respectfully, WM. P. MALBURN,
(29619.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36243.)

Drawback on saw plates.

Drawback on imported steel circular and band saw plates hardened and tempered or hardened, tempered, ground, and polished by E. C. Atkins & Co., of Indianapolis, Ind.—T. D. 30692 of June 13, 1910, revoked.

TREASURY DEPARTMENT, *March 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on imported steel circular and band saw plates exported after having been hardened and tempered or hardened, tempered, ground, and polished by E. C. Atkins & Co., of Indianapolis, Ind.

A manufacturing record shall be kept, which will show, in the case of each saw plate manufactured for exportation with benefit of drawback, the serial number and date of manufacture thereof, the character and net weight of the plate as imported, the net weight of the finished product, the quantity of waste incurred, and the value of such waste, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed one imported saw plate for each finished saw plate exported, the allowance to be reduced according to the value of the waste.

The sworn statement of manufacture, dated February 16, 1916, is transmitted herewith for filing in your office.

T. D. 30692 of June 13, 1910, is hereby revoked.

Respectfully, WM. P. MALBURN,
(34825.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

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(T. D. 36244.)

Drawback on toilet preparations.

Drawback on toilet preparations manufactured by the Theo. Ricksecker Co., of New York, N. Y., with the use of domestic tax-paid alcohol.—T. D. 30346 of February 8, 1910, revoked.

TREASURY DEPARTMENT, *March 16, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on toilet preparations manufactured by the Theo. Ricksecker Co., of New York, N. Y., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported articles, as shown by the sworn statement of manufacture, dated February 1, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules showing changes in the quantities of alcohol used or covering other toilet preparations may be filed, and upon verification of such supplemental schedules drawback may be allowed on the preparations covered thereby.

T D. 30346 of February 8, 1910, is hereby revoked.

Respectfully, WM. P. MALBURN,
(70333.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36245.)

Plant quarantine act—Disinfection of imported cotton.

Collectors of customs informed of the date of taking effect of the orders of the Secretary of Agriculture for the disinfection of imported cotton.

TREASURY DEPARTMENT, *March 16, 1916.*

To collectors of customs:

Your attention is invited to the appended order of the Secretary of Agriculture relative to the date of taking effect of the regulations under the plant quarantine act for the disinfection of imported cotton (T. D. 36212).

(92655-19.) WM. P. MALBURN, *Assistant Secretary.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
FEDERAL HORTICULTURAL BOARD.

MARCH 3, 1916.

Order fixing effective date for fumigation of foreign cotton.

There being adequate facilities at the ports of Boston and San Francisco for the disinfection of imported cotton, it is hereby ordered that the requirement of disin-

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fection made by regulation 7 of the rules and regulations governing the importation of cotton into the United States, revised January 25, 1916, effective February 1, 1916, which was postponed until further notice by plant quarantine decision No. 9, shall become effective on March 10, 1916.

All foreign cotton not unloaded on the docks prior to midnight of March 9, 1916, shall be disinfected under the provisions of said regulation 7.

D. F. HOUSTON, *Secretary of Agriculture.*

(T. D. 36246.)

Plant quarantine act—Importation of pine trees.

Amendment No. 1 to notice of quarantine No. 7, prohibiting the importation from Canada and Newfoundland of certain pine trees, etc.

TREASURY DEPARTMENT, *March 17, 1916.*

To collectors of customs and others concerned:

The appended copy of amendment No. 1 to notice of quarantine No. 7, prohibiting the importation from the Dominion of Canada and Newfoundland of certain pine trees, etc., is published for the information and guidance of customs officers and others concerned.

(92655–19.) WM. P. MALBURN, *Assistant Secretary.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
FEDERAL HORTICULTURAL BOARD.

Amendment No. 1 to notice of quarantine No. 7—White pine blister rust.

The fact has been determined by the Secretary of Agriculture that a tree disease known as white pine blister rust (*Peridermium strobi* Kleb.), not heretofore widely prevalent or distributed within and throughout the United States, exists in the Dominion of Canada and in Newfoundland.

Now, therefore, I, David F. Houston, Secretary of Agriculture, under authority conferred by section 7 of the act approved August 20, 1912, known as "The plant quarantine act" (37 Stat., 315), do hereby declare that it is necessary, in order to prevent the further introduction into the United States of the white pine blister rust, to forbid the importation into the United States from the Dominion of Canada and Newfoundland of all five-leafed pines and all species and varieties of the genera *Ribes* and *Grossularia*, known to be carriers of this dangerous disease.

On and after March 16, 1916, and until further notice, by virtue of said section 7 of the act of Congress approved August 20, 1912, the importation from the Dominion of Canada and Newfoundland of all five-leafed pines and all species and varieties of the genera *Ribes* and *Grossularia*, except for experimental or scientific purposes by the Department of Agriculture, is prohibited.

Notice of quarantine No. 7 is amended accordingly.

Done at Washington this 29th day of February, 1916.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL.] D. F. HOUSTON, *Secretary of Agriculture.*

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(T. D. 36247.)

Drawback on shell bodies.

Drawback on imported incomplete shell bodies exported after having been partially completed by the E. W. Bliss Co., of New York, N. Y.

TREASURY DEPARTMENT, *March 17, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on imported incomplete body parts of explosive shells exported after having been partially completed by the E. W. Bliss Co., of New York, N. Y., in the manner described in their sworn statement of March 2, 1916, which is transmitted herewith for filing in your office.

The allowance shall not exceed one imported incomplete shell body for each partially manufactured shell body exported.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after December 23, 1915.

Respectfully, WM. P. MALBURN,
(103766–1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36248.)

Drawback on chocolate coatings.

Drawback on chocolate coatings manufactured by the Brewster Sons Co., of Newark, N. J., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *March 16, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on chocolate coatings manufactured by Brewster Sons Co., of Newark, N. J., with the use of refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated September 23, 1915, transmitted herewith, which will show, in the case of each lot of chocolate coatings manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity of chocolate coating produced, and the quantity and identity of the refined sugar appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

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The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported chocolate coatings, as shown by the abstract from the manufacturing record.

Respectfully, WM. P. MALBURN,
(104076-1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36249.)

Pedometers.

Appeal directed from decision of the Board of United States General Appraisers of March 6, 1916, Abstract 39343, involving the classification of certain pedometers.

TREASURY DEPARTMENT, *March 18, 1916.*

SIR: The department is in receipt of your letter of the 7th instant, inviting attention to the decision of the Board of United States General Appraisers of March 6, 1916, Abstract 39343, wherein certain pedometers, which had been assessed with duty at the rate of 60 per cent ad valorem under paragraph 356 of the tariff act of 1913, were held by the board to be dutiable at the rate of 20 per cent ad valorem as manufactures of metal not specially provided for under paragraph 167 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(104780.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36250—G. A. 7875.)

Legality of reappraisement.

1. MARKET VALUE.

Where merchandise has no market value in the country of production, and the market value as defined by law can not be ascertained to the satisfaction of the appraising officer, the cost of production should be ascertained as provided in the first provision of subsection L of section 3 of the tariff act of 1913, and the appraisement made accordingly.

2. CONSIGNED FOR SALE.

The same company being the owner, consignor, and consignee of canned pineapples exported from the Bahama Islands, such merchandise is not *consigned for sale* within the meaning of that term as used in subsection L of section 3.

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3. REAPPRAISEMENT.

The action of a board of general appraisers reappraising canned pineapples owned, consigned by, and shipped to the same company on the basis of the wholesale market value in the United States, as if *consigned for sale* in the United States, is without warrant in law and therefore illegal and void.—G. A. 6655 (T. D. 28382); United States *v.* Haviland (167 Fed., 414, T. D. 29523; 177 Fed., 175, T D. 30296); Cooley's Constitutional Limitations (p. 68); and Market Company *v.* Hoffman (101 U. S., 113), cited.

SULLIVAN, *General Appraiser*, dissenting, holds:

(1) In the appraisement of merchandise, the only question involved is the ascertainment of market value at the date of shipment, and appraising officers are to use all reasonable ways and means to ascertain such value as defined by paragraph L of the tariff act of 1913.

(2) In ascertaining such market value appraising officers, including a reappraising board of three, if the merchandise has no market value in the country of production and is not freely offered for sale therein, may ascertain such value by taking the cost of production or the American selling price, in their discretion; and the method which will more surely ascertain market value is the one to pursue.

(3) A board of reappraisement, having jurisdiction of the parties and the subject matter, having before it on appeal to reappraisement the question of the market value of a shipment of pineapples from the Bahama Islands, at which place there was no market for such merchandise, billed by the shipper from himself to himself, and entered in his own name, there being attached to the invoice an itemized statement of the cost of production, was not required to accept such cost of production, but was justified in taking the American selling price, as the basis upon which to ascertain market value.

United States General Appraisers, New York, March 13, 1916.

In the matter of protest 793232 of J. S. Johnson Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Walden & Webster (*Henry J. Webster* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*John R. Rafter*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers; SULLIVAN, G. A., dissenting).

MCCLELLAND, *General Appraiser:* No question is raised by this protest as to the rate of duty assessed upon the merchandise involved, but the collector's assessment is attacked upon the ground that it was based upon a value arrived at by a single general appraiser and a board of general appraisers in an unlawful manner, in that the said general appraiser and board of general appraisers in reaching said value exceeded the powers conferred upon them by statute, and their decisions were therefore illegal and void.

Although it does not clearly appear from the record, we nevertheless think that on the stipulation filed the conclusion is warranted that the protest is limited to 100 cases of coreless sliced canned pineapples, imported from the Bahama Islands.

That the decision of a general appraiser or a board of general appraisers determining foreign market value in a manner claimed to have been reached in disregard of the provisions of the statute for

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the ascertainment of such foreign market value may be reviewed on protest is well settled. Auffmordt *v.* Hedden (137 U. S., 310); United States *v.* Passavant (169 U. S., 16); Maddaus *v.* United States (3 Ct. Cust. Appls., 330; T. D. 32623); United States *v.* Loeb (107 Fed., 692); United States *v.* Curnen & Steiner (146 Fed., 45); G. A. 6035 (T. D 26354); G. A. 6379 (T. D. 27408); Abstract 36098; G. A. 6655 (T. D. 28382), affirmed by United States Circuit Court in United States *v.* Haviland (167 Fed., 414; T. D. 29523), and United States Circuit Court of Appeals (177 Fed., 175; T. D. 30296).

It is, of course, the decision of the board of three general appraisers fixing the market value which forms the basis of the collector's assessment of duty complained against that we are called upon to review, the decision of the single general appraiser being pertinent only in so far as it appears to have fixed the same value as that fixed by the board and arrived at, as indicated by the record, by the same line of reasoning and upon the same theory.

The record in the case before the reappraising board, with the exception of testimony as to the sale price of similar merchandise in wholesale quantities in the United States, taken in a former case and admitted here by consent, aside from the official papers, is made up of stipulated facts and exhibits forming parts thereof.

At the hearing before this board the record made before the reappraising board was supplemented only by the testimony of witnesses called to testify as to the meaning given in commercial circles to the term "consigned for sale." It is disclosed that the protesting company, for a considerable period prior to the importation of the pineapples in question, maintained and operated a canning factory at Nassau, New Providence, and packed and shipped the entire output of such factory to itself at its home office in the city of New York, and that, as had been its practice during the operation of such factory, the 100 cases here in question were invoiced upon the basis of cost of production, itemized as follows:

100 c/s gals. coreless sliced pineapple preserved in its own juice, 30 lbs. fruit to c/s and packed 6 tins to c/s:

Fruit at 88c. per c/s	$88.00
Labor at 7c. per c/s	7.00
Gen'l exp. 10 per cent	9.50
Profit on total cost as above, 8 per cent	8.36
	112.86

And on entry an addition of $69.50 was made under the last proviso in subsection I of section 3 of the tariff act of 1913, as stated in the memorandum indorsed upon the paper entry.

The United States appraiser passed the merchandise at the entered value and the importers filed notice with the collector of appeal to reappraisement by a single general appraiser. After a hearing on said appeal the general appraiser found the value of said merchandise

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to be $1.808 per case. The importing company still being dissatisfied with the value thus found by the general appraiser filed notice of appeal to re-reappraisement by a board of three general appraisers, and after a hearing on said last mentioned appeal the said board of general appraisers affirmed the value found by the single general appraiser. Neither the single general appraiser nor the board of general appraisers reappraising the merchandise in question filed a memorandum to indicate how the value finally found was arrived at, and there is nothing in the papers which make up the record that directly shows on what facts or by what mental process of reasoning the reappraised value was determined.

Counsel for the protesting company contends that the reappraised value was arrived at by taking as a basis the average wholesale price of such merchandise in the markets of the United States for the period between June 1 and November 2, 1914, upon the theory that the merchandise was *consigned for sale*, deductions from such average wholesale price being made for estimated duties, cost of transportation, etc., as provided in the latter part of subsection L of section 3 of the act of 1913, *supra*. An analysis of the record we think bears out this contention. There is no pretense of claim by either the Government or the importing company that there is a wholesale market value for coreless sliced canned pineapple in the Bahama Islands, and there is no evidence tending to show that the statement of cost of production supplied by the importers is not truly stated in the invoice.

Attached to the stipulation heretofore referred to (Exhibit 1) are the following papers which were admitted in evidence under said stipulation: Letter from Customs Agent Hermes, marked "A," and inclosure, tabulated statement, also marked "A"; letter from Customs Agent Hermes, marked "B"; stipulation, marked "C"; and statement of cost of production, marked "D."

The letter marked "A" first referred to is as follows:

(A.)

NOVEMBER 5, 1914.

ASSISTANT UNITED STATES ATTORNEY GENERAL,
641 Washington Street, New York City.

SIR: In compliance with the verbal request of Mr. Rafter of your office, there is transmitted herewith a tabulation showing the dutiable values of four kinds of canned Bahama pineapple, imported by the J. S. Johnson Co., said values having been determined by figuring back from the U. S. selling prices, under Par. L, Section III, of the tariff act of 1913, for use in proceedings now pending before the Board of General Appraisers.

Respectfully,

(Signed) PAUL HERMES,
Customs Agent.

Respectfully forwarded.
Approved:
(Signed) H. D. ESTERBROOK,
Special Agent Acting in Charge.

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The tabulated statement inclosed with this letter, also marked "A," is as follows:

(A.)

J. S. JOHNSON CO.

Dutiable values of canned Bahama pineapple, determined by figuring back from the U. S. selling prices, under Par. L, section III, of the tariff act of Oct. 3, 1913:

	No. 10 (gallons) coreless sliced.
Average selling price in the United States, per dozen cans	$6.009
Expenses, per dozen cans:	
(1) Cans, of American manufacture, delivered f. o. b. Baltimore or New York, $45.50 per 1,000	.546
(2) Cases of American manufacture, delivered f. o. b. Baltimore or New York, 13½c. each	.27
(3) Ocean freight on cans and cases, from Baltimore or New York to Nassau, 8½c. per case	.17
(4) Marine insurance on cans and cases, going to Nassau, 1½ per cent	.012
(5) Drayage from factory to wharf at Nassau, 1c. per case	.02
(6) Ocean freight on the finished product, Nassau to New York, 10½c. per case	.21
(7) Marine insurance on the finished product, Nassau to New York, ½ per cent of the estimated dutiable value plus expenses, 1, 2, 3, 4, and 5	.012
(8) Drayage in New York, from wharf to cars, 2c. per case in Manhattan, 3c. per case in Brooklyn, average 2½c. per case	.05
(9) Cash discount 1½ per cent	.09
(10) Loss on account of swells and leaks, estimated 2½ per cent of selling prices	.15
(11) Brokerage, estimated 1½ per cent of selling prices	.08
(12) Duty, 20 per cent of the estimated dutiable value	.733
Total expenses	2.343
U. S. selling price as above	6.009
Less expenses	2.343
Dutiable value of contents per dozen cans	3.666
Correction on cartage 5c	.05
	3.616

And the letter marked "B," the stipulation, marked "C," and the statement of the cost of production, marked "D," follow in order:

(B.)

NOVEMBER 7, 1914.

ASSISTANT U. S. ATTORNEY GENERAL,
641 Washington Street, New York City.

SIR: Referring to the tabulation showing the dutiable values of certain kinds of canned Bahama pineapple, transmitted to you under date of the 5th instant for use in the reappraisement case of the J. S. Johnson Co., I have the honor to report how the various items appearing in said tabulation were obtained.

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UNITED STATES SELLING PRICES.

Mr. Wm. H. Smith, vice president of the J. S. Johnson Co., submitted the sales book of his firm following my request, from which book I obtained the following figures of sales made between June 1, 1914, and November 2, 1914:

No. 10 (gallons) coreless sliced (six cans per case):

1,721 cases, at $3.00 per case.
33 cases, at $3.25 per case.

1,754 cases, at a total of $5,270.25.
Average price per dozen cans, $6.009.

EXPENSES.

(1) *Cans.*—Mr. Smith submitted invoices showing purchases of cans made by his firm at the following prices: No. 10, $45.50 per 1,000, delivered f. o. b. Baltimore or New York.

(2) *Cases.*—Mr. Smith likewise produced invoices covering purchases of cases at the following prices: No. 10, 13½c. each, delivered f. o. b. Baltimore or New York.

(3) *Ocean freight* on cans and cases, from Baltimore or New York to Nassau. I saw a duplicate bill of lading showing a freight charge for a shipment of cans and cases which figured down to 8½c. per case.

(4) *Marine insurance* on cans and cases going to Nassau. Mr. Smith stated that his firm paid 1½ per cent on their value, but he was unable to submit documentary evidence owing to the fact that the insurance was covered by the Nassau office of his firm.

(5) *Drayage* from factory to wharf at Nassau. Mr. Smith testified at the hearing in this case that his firm paid 1c. per case for drayage.

(6) *Ocean freight* on the finished product from Nassau to New York, 10½c. per case, as per Mr. Smith's testimony at the hearing.

(7) *Marine insurance* on the finished product from Nassau to New York, ¼ per cent of the value, as per Mr. Smith's testimony at the hearing.

(8) *Drayage* in New York, from wharf to cars, 2c. per case in Manhattan, 3c. per case in Brooklyn, as per Mr. Smith's testimony at the hearing.

(9) *Cash discount.*—I found that all these goods are sold subject to 1½ per cent cash discount, and while not every customer avails himself of this discount, I allowed it in the tabulation.

(10) *Loss on account of swells and leaks*, 2½ per cent of the selling prices. Mr. Smith stated that he was unable to submit figures covering the sales made between June 1, 1914, and November 2, 1914, since this loss was in some cases not claimed until long after the respective sales had been made, and could therefore not be accurately determined at this time. In a previous reappraisement case of this firm the loss was figured at 2½ per cent and was based upon the complete figures of the business done in 1911 and 1912. I therefore made the same allowance in this tabulation.

(11) *Brokerage* is a commission paid to the selling agents of the firm. I could not obtain the complete figures for this season, owing to the fact that a great part of the merchandise under consideration is as yet unsold. I therefore adopted the same rate as allowed in the former case, viz, 1½ per cent, which was likewise based upon the business done in 1911 and 1912.

Respectfully,

(Signed) PAUL HERMES,
Customs Agent.

(C.)

Board of United States General Appraisers. Before General Appraiser Waite.

In the matter of reappraisement Nos. 75118, 75690, 75688, 75689, 75691, 75743, 75711, and 75909 of J. S. Johnson Co., pineapples in cans from Nassau, Bahama.

It is hereby stipulated and agreed that the annexed letter marked "B," showing the wholesale United States selling prices of pineapples in cans imported and sold

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by J. S. Johnson & Co., and certain charges and expenses incidental thereto, was prepared after an examination of the books of said J. S. Johnson & Co., and that the items appearing therein are true and correct, and accurately represent the American selling prices of the merchandise in a canned condition covered by the invoices in the above reappraisements.

JOHN R. RAFTER,
Attorney for the Government.
WALDEN & WEBSTER,
Attorneys for the Importer.

(D.)

Statement of cost of production furnished by J. S. Johnson Co.

Pineapples in tins. Reappraisement 75690. S. S. *Vigilancia*, June 18, 1914, entry No. 189095.

Merchandise.	Per case invoice figures.	Cost figures at end of season.	
Gallons, coreless, sliced, 30 pounds to case, 6 tins to case.	Fruit at 2-/10c. a pound	Fruit at $0.88 3½c. a pound	$1.00
	Labor	.07 labor	.105
	General expenses, 10 per cent.	.095 general expenses, 10 per cent.	.11
	Profit, 8 per cent	.083 profit, 8 per cent	.097
	Total	1.128 Total	1.31

Although, as we have heretofore stated, there is nothing in the record which directly indicates on what facts or by what mental processes of reasoning the reappraised value was arrived at, we think that in view of the tabulated statement "A," *supra*, which gives the dutiable value of the pineapples involved as being $3.616 per dozen cans, or $1.808 per case—the exact value found by the single general appraiser and affirmed by the board of general appraisers—the assumption is warranted that this statement formed the basis for the decision of the board, it being quite unlikely that a value agreeing to the fractional part of a cent per case could have been arrived at by any other method of calculation. Especially do we think this assumption warranted when it is noted that there is absolutely no other evidence in the case to justify a finding of such value. It is unmistakable, we think, that one of two facts must be found, viz, either that this tabulated statement "A" formed the basis of the board's finding of market value or that otherwise there was no evidence before the board to justify any such finding of value, and in either case our conclusion must be the same.

There appears to be no dispute that the statement of cost of production and American selling price are each correct and that either of them should be considered as forming the basis for assessment of duty, depending upon which is finally held to be equal to the foreign value for dutiable purposes.

In subsection L of section 3 of the act of 1913, *supra*, two distinct methods for the appraisement of imported merchandise are provided. The first applies to merchandise wholly or partly manufactured in and imported from a foreign country, the actual market

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value of which can not be ascertained to the satisfaction of the appraising officer; the second applies to merchandise which is *consigned for sale* in the United States and which is not actually sold or freely offered for sale in usual wholesale quantities in the open markets of the country of exportation to all purchasers and also to merchandise which is *sold for exportation* to the United States and which is not actually sold or freely offered for sale in usual wholesale quantities in the open markets of the country to all purchasers.

The first paragraph of this subsection, or what may be termed the cost-of-production provision, was first enacted in 1897 (see sec. 11, customs administrative act), and the remaining provision, covering merchandise consigned for sale or sold for export to the United States, was added in the revision of 1909. If that which prompted Congress to make this change in preexisting statutes may be discovered, such discovery may aid in giving to the law as it now stands that meaning and operative force that it was designed by Congress to have. If the decision of the reappraising board was arrived at in conformity with this statute, it then follows that there is provided for but one method for the reappraisement of merchandise for which there is no market value in the country of exportation, and all such merchandise must therefore, in consequence, be appraised on the basis of the wholesale selling price in the United States, provided the calculations on that basis show that the value thus ascertained is greater than the cost of production ascertained according to the first provision of subsection L, *supra*. We can not subscribe to this view for the reason that we believe that Congress intended to differentiate between merchandise that was consigned by a foreign manufacturer to an agent in the United States for sale, or which was sold for export to the United States and for which there was no market value in the country of exportation, and merchandise which is neither *consigned for sale* to the United States *nor sold for export* to the United States. The protesting company is an American resident concern that neither consigns the product of its factory in the Bahamas nor sells it for export, and it is our view that Congress never intended to place such a concern, shipping its own product to itself, on a par with foreign shippers consigning for sale or selling for export only, whose every data and interest is beyond the jurisdiction of the United States.

During the hearings before the Ways and Means Committee preliminary to the enactment of the tariff law of 1909, as reported in an official volume, entitled "Tariff Hearings 1908–9," one Col. Albert Clarke, of Boston, who was manifestly an advocate of home or American values as bases for the levying of duties, presented an elaborate argument before the Committee on Ways and Means of the House of Representatives, December 4, 1908, in which copious extracts from statesmen and tariff experts were embodied. If these extracts tend

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to show any one thing more clearly than another it is that the basis for the action by Congress asked for by Col. Clarke was the practice of manufacturers in foreign countries consigning their output of merchandise to their own agents in the United States for sale in United States currency at prices which included duty and all other charges incidental to transportation. Among the quotations from men experienced with these conditions were extracts from the testimony of Col. Geo. C. Tichenor given before a tariff commission in 1882. For many years Col. Tichenor had been a special agent of the Treasury Department and it is manifest from his own language that in so far as he defined the position of the Government it was the desire to have such legislation as would enable the customs administrative officers to better safeguard the revenue as to merchandise consigned for sale by foreign principals to their agents in the United States, as evidenced in his own words, as follows:

Having in view ad valorem duties, I would suggest as a measure calculated to circumvent and break up the pernicious consignment system, to which I have referred, the levying of a discriminating duty of, say, 20 per cent upon all such importations subject to ad valorem duties. And since the market value of such goods is, as a rule, fixed at a dollar price duty paid, in this country, instead of in the country of production and currency of such country, there is eminent propriety in assessing the duty thereon according to the home value, instead of the unknown and uncertain value in the country of production. I am aware that cases would arise where it would be difficult to apply home values, such, for example, as the first importations of new articles and classes of merchandise. I apprehend, however, that it will not be contended that the difficulties thus encountered would be as great as are met in arriving at the true foreign market value of the immense quantities and kinds of goods consigned to this country, for sale and returns, which are reputed to be made "specially for the American market." It rarely occurs that goods in large quantities and of great value are consigned here, unless they have been placed in advance or their probable value in the market ascertained.

Another expert testifying before this commission and quoted by Col. Clarke was Hon. Henry F. French, Assistant Secretary of the Treasury, in charge of customs:

Another matter is the fact that formerly most of the goods that were imported were actually bought and sold. They were imported by the buyer, and purchased in the market at a fair and regular price. Now, a great proportion of the goods that come into the market (dress goods and silk particularly) are consigned. They are not sold before they come to this country, and, as I said yesterday, in the silks particularly there are large establishments which manufacture for the American market and sell to one particular American dealer. A house in New York will have a line of goods manufactured especially for them in France, perhaps in Lyons, and will import all the goods that are manufactured by that house themselves. They will have no competition in the market. These goods are not sold in the foreign market at all. They have no established price abroad, and the question is, How shall they be valued here? We have to find out how much the goods sell for here and how much they must cost. The raw material costs so much, the labor so much, and other goods somewhat like them sell for so much. We thus work out the problem, and we assume a foreign price which never did exist, because (as I have said) there is no sale abroad

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for these goods. By that sort of computation we get at the foreign price. It can not be done in any other way.

As to consigned goods, they are in the same position. A silk manufacturer in France who makes a particular kind of goods for this market has an agent in New York to whom all these goods are consigned. They do not sell a yard of them in the open market, but send them here on consignment. There is no French value for them by which our statute can be complied with, but it has to be ascertained. The invoice is made up as the law contemplates, but it is made up at the lowest value which the consignors dare to fix for the goods, because if the value were fixed too low they know that it would be raised here. There is, therefore, no sense in retaining this provision for foreign valuation. It is the home valuation, in fact, which should control the duty.

As further indicating the purpose of the Treasury Department, which had then, as now, supervision of customs administration, and as indicating that the question of consigning merchandise and to combat consequences thereof upon the customs revenue exported from foreign countries for sale in the United States, the then Secretary of the Treasury, Hon. Daniel Manning, in his official report of the revision of the tariff in 1886, at page 41, had this to say:

The sending to New York of merchandise by foreign manufacturers and presenting it there for sale, or the taking in this country of orders, on samples, of merchandise to be delivered in New York at duty-paid prices arranged in our currency, is a growing fact which this Government must face in selecting and prescribing rates of duty. Just as manufacturers in other States of our own Union send their merchandise on consignment to their own agents to sell in New York, so do, and so will European manufacturers. The ledgers of commerce and trade will, more and more, be written and kept in that city, and laws of taxation, State or National, immediately probable, are not likely to greatly impede or change the current. As buyers in New York do not go to New England to buy her staple manufactures, but find all the elements of buying in New York, so it will naturally be with European productions. If that is to be the case, I do not think our existing ad valorem rates can in the future be honestly or satisfactorily worked under the existing conditions of our invoice law, our appraising law, and the force of consular and appraising officers that we now have.

That counsel for the Government recognizes that all merchandise for which there is no ascertainable market value in the country from whence exported is not to be appraised on the basis of the American selling price is conceded in his brief in these words:

Of the three possible methods of appraisement provided for by law it does not appear which was followed.

It is conceded that in the country of production there is no market for the merchandise in question. It is also conceded that the protesting company sends from the United States the tin containers in which the pineapples prepared by it are packed and shipped to its home office at the port of New York for entry into its own stock, the ownership remaining in the said protesting company until sold by it in the United States in the regular course of business.

The question at issue must turn upon the meaning to be given to the words "consigned for sale" in subsection L, *supra*. If it be held that merchandise manufactured by an American company in a foreign

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country, shipped to itself at an American port, entered by it for consumption and taken into its stock to be sold in the regular course of its American business is, within the meaning of the statute, a *consignment for sale*, the reappraising board was justified in ascertaining market value by the method provided in the latter part of subsection L, *supra*, which reads:

> The actual market value or wholesale price, as defined by law, of any imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States, and which is not actually sold or freely offered for sale in usual wholesale quantities in the open market of the country of exportation to all purchasers, shall not in any case be appraised at less than the wholesale price at which such or similar imported merchandise is actually sold or freely offered for sale in usual wholesale quantities in the United States in the open market, due allowance by deduction being made for estimated duties thereon, cost of transportation, insurance, and other necessary expenses from the place of shipment to the place of delivery, and a commission not exceeding 6 per centum, if any has been paid or contracted, to be paid on consigned goods, or profits not to exceed 8 per centum and a reasonable allowance for general expenses (not to exceed 8 per centum) on purchased goods.

If it be so held that such merchandise was "consigned for sale," it must also be held that the value found by the reappraising board can not be disturbed inasmuch as it had before it evidence upon which to base such a finding.

A classification board may not even examine the evidence that was before the reappraising board for the purpose of weighing or determining its preponderance. Its only function is to ascertain and determine whether or not there was any evidence before that board upon which to base its finding, or whether such board proceeded upon a wrong principle in the ascertainment and determination of market value. G. A. 6655, *supra*, affirmed in United States *v.* Haviland (167 Fed., 414, T. D. 29523, and 177 Fed., 175, T. D. 30370).

At the hearing before this board a number of witnesses were produced by the protesting company, each of whom was shown to have had extended commercial experience as agent for merchandise consigned for sale. The purpose of calling these witnesses was that of establishing the understanding of the term "consigned for sale," as between consignors and consignees, and they were agreed that a consignment for sale always contemplates a principal and an agent, the agent upon the execution of his trust always making and rendering an account of sales to his principal; that it is uniformly understood in commercial circles that a consignment for sale always contemplates ownership in the consignor and nothing more than an agency in the consignee. It may be doubtful how much weight should be given to this testimony in determining the meaning to be given to the term "consigned for sale," as used in subsection L, but it at least strengthens the conviction, which would seem to be un-

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avoidable from a reading of the entire paragraph, that Congress intended in using the expression that a consignment for sale should involve the relationship of principal and agent, the principal being the owner and the agent nothing more than a sales agent, and manifestly no such relationship existed between consignor and consignee of the merchandise in question.

To conclude that the reappraising board was warranted in ascertaining the foreign market value of the merchandise in question by figuring back from the wholesale market value of such merchandise in the United States would be equivalent to saying that the first provision of subsection L, *supra*, was meaningless and this would be contrary to every rule of statutory construction. See Cooley's Constitutional Limitations (p. 68) and Market Co. *v.* Hoffman (101 U. S., 113).

There is absolutely no warrant, we think, for assuming that all goods, wares, and merchandise imported into the United States are either *consigned for sale* or *sold for export*. On the contrary, we believe it to be a matter of common knowledge with those familiar with customs administration that a great variety of articles of merchandise are imported into the United States which are neither consigned for sale nor sold for export, and as to all of such articles, for which there is no market value ascertainable in the country of production, or the country from which the same are exported, or as to which the market value can not be ascertained to the satisfaction of the appraising officer, it is at once apparent, we think, that the appraisement could not be made under the latter provision of subsection L, *supra*, and therefore the cost of production must be resorted to and the appraisement made as provided in the first part of said subsection L. This seems to have been the view of the Congress in framing and passing subsection L, for wide latitude is given to the appraising officer in determining the percentage of profit which should be added to the total cost of production, which may vary from 8 to 50 per cent of such total cost of production as thus ascertained.

We have sought to find a congressional intent which would reconcile and harmonize the language of the provisions of subsections J, K, and L, taken all together, and after careful and mature consideration we are led to the view that Congress intended first and primarily that the appraised value should be found on the basis of sales in the country of production, but when the value of manufactured goods on that basis for any reason could "not be ascertained to the satisfaction of the appraising officer" he was to then, secondarily, and before he did anything else, "use all available means in his power to ascertain the cost of production" and to proceed to find a value upon the basis of such cost of production, plus a profit of not less

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than 8 or more than 50 per cent, as from the evidence before him he found to be a reasonable charge for such profit.

Further, the Congress recognized that where the manufacturer refused "to sell" or even "offer for sale" such merchandise in the home market of the country of production, in such event it would not be always possible to compel the production of the foreign manufacturer's books under the judicial powers vested in this board, because the agent in America to whom it was "consigned for sale" would usually not have access to or control of the foreign books or be familiar himself with the manufacturing cost of the goods he was handling; and similarly, that when the manufacturer sold only "for export," the person importing would not have knowledge of the manufacturing cost, and such importer would therefore not be a source from which the production of such information could be effectively compelled. In either such situation resort was to be had to the American selling price, counting back in the statutory method, and the value so found from the American selling price was to be taken as a minimum even if the cost of production method showed a less figure.

Thus was there provided an additional safeguard or alternative minimum acting as an effective check upon the finding of value by cost of production on such merchandise as was "consigned for sale" or "sold only for export to the United States," where by reason of the presence of either of the circumstances above recited the production of the manufacturer's books themselves could not be readily compelled for purposes of verification.

The case at bar, therefore, where the goods are manufactured and are imported by an American concern which manufactures them in a foreign country and consigns them to its New York office (whose books are all within the jurisdiction and no such check is therefore needed) does not come within the spirit or purpose of the provision fixing foreign market value on the basis of the American selling price.

Consequently, in our opinion, the goods here in question should not be held to be consigned for sale within the meaning of that provision. It necessarily follows that the appraisement upon the basis of the selling price in this country for such manufactured goods was without statutory warrant and must be so declared.

On the record as presented we make the following findings of fact:

First. That there was no market value for the merchandise here involved in the country of production at the time of exportation to the United States.

Second. That the decision of the reappraising board was based upon the wholesale price of such merchandise in the markets of the United States, due allowance by deduction being made therefrom

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for estimated duties thereon, etc., as provided in subsection L of section 3 of the tariff act of 1913 for the appraisement of merchandise consigned for sale.

And we hold as conclusions of law—

(*a*) That the merchandise was not *consigned for sale* within the meaning of subsection L, *supra*, and that there was therefore no warrant in law for appraising it on the basis of the wholesale price thereof in the United States calculated as detailed in the tabulated statement marked "A" annexed to Exhibit 1.

(*b*) That the action of the reappraising board in determining the market value of this merchandise on the basis of the wholesale price of such merchandise in the United States was without warrant of law, and therefore illegal and void.

(*c*) That the merchandise should have been appraised under the first provision of subsection L, *supra*.

The protest is therefore sustained as to the 100 cases of pineapples to which the claim is limited by stipulation, and the collector will reliquidate the entry accordingly.

DISSENTING OPINION.

SULLIVAN, *General Appraiser:* As I can not agree with the majority opinion, I wish fully to present my reason therefor.

This is a protest before a classification board claiming as illegal an act of a reappraisement board of three, who, in arriving at market value, took the American selling price as a base, with the deductions provided for in paragraph L of section 3 of the tariff act of 1913.

It is the contention of the importers that this action was void; that the law contemplated, if the board was unable to ascertain to its satisfaction actual market value as defined by law, that it should first take as its basis the cost of production, and failure to do so was such disregard of the provisions of the statute as to entitle the importers to review this action by protest.

The merchandise consists of pineapples in containers. The containers were forwarded from this country to the Bahamas, there filled, and shipped by the importing company from its office in Bahama to itself in New York, and then sold to the American trade. In fact, they have no market in the country of production. They are not sold for home consumption in the Bahamas.

It is claimed the shipment from the packer to himself is not a conignment within that part of paragraph L, which states—

> The actual market value or wholesale price, as defined by law, of any imported merchandise which is consigned for sale in the United States—

and that only as to consigned merchandise can the American selling price be taken as a basis in ascertaining market value.

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In a stipulation it was agreed that there was attached to the invoice the cost of production, $112.86. The goods were entered pursuant to the last clause of paragraph L at $225. The value was advanced by the appraiser to $364.72, and sustained by a single general appraiser and the reappraising board.

The appellant in presenting his testimony to the reappraising board based it alone on the American selling price.

It is contended that the courts have solemnly adjudicated if an appraiser or general appraiser or board of general appraisers follow a wrong construction of the law, their action is void, and may be declared so by the courts. It is admitted there are such authorities, but it seems to us this holding is not in harmony with the appraisement of merchandise as clearly set forth in the tariff acts of the United States since 1890. In the first instance, the question of value is determined by the appraiser. If dissatisfied with his action, an appeal may be taken to a single general appraiser. If again dissatisfied, the importer can appeal to a board of general appraisers, and their action becomes final. The reviewal of the action of the board of reappraisement by a court nullifies this provision of the law. Appraisement of merchandise is solely for the purpose of ascertaining market value, and is in a class by itself. Where the law permits two appeals to be taken, as it does in appraisement proceedings, it would seem unlikely the same error would be committed by each tribunal. When the law declared the action of the board final, it had a purpose in so doing. This idea is so clearly expressed in the case of Passavant *v.* United States (148 U. S., 214–218) that we can not resist quoting therefrom:

> Can a complaint of this character be entertained and considered by the circuit courts of the United States in a case like the present, where the Board of General Appraisers has, upon the appeal of the importers, ascertained and decided that the imported article actually possesses a value greater than that stated in the invoice or entry? Can the decision of the board on the question of the dutiable value of the merchandise be reviewed by the courts under the provisions of section 15 of the customs administrative act? This is the real question presented, and we are clearly of the opinion that no such jurisdiction is conferred by this statute or any other provision of law. * * *
>
> The appeal to the court in the present case seeks to review no such decisions as are thus enumerated as falling within its jurisdiction under said sections. On the contrary, the decision of the Board of General Appraisers sought to be reviewed and corrected by this application to the court relates to the reappraisement of the imported goods. By section 13 of the act the decision of the board on that matter is declared to "be final and conclusive as to the *dutiable value* of such merchandise against all parties interested therein." * * * The provisions of the customs administrative act of June 10, 1890, as to the finality and conclusiveness of the decision of the Board of General Appraisers as to the valuation of imported merchandise, when that question has been regularly submitted to and examined by them, is expressed in clearer and more emphatic terms than in former statutes. The language is so explicit as to leave no room for construction.

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It must necessarily follow that if courts may arrest the final determination of an appraising board, there must be no doubt that the board did adopt a wrong procedure and a false construction of the law.

It will be observed the reappraising board had before it the cost of production. The American selling price was obtained from the importers' books. The question then is clearly presented by this record. In the reappraisement of merchandise is it required to first ascertain the cost of production, and if that can be had or done, must it be followed, admitting there is no market in the country of production? Or can an appraising officer, in ascertaining the market value of merchandise, take either method provided in paragraph L if it leads to the fact as to the actual market value of the merchandise invoiced?

The statute with reference to appraisement of merchandise is practically all contained in paragraphs J, K, and L of section 3 of the tariff act of 1913. Paragraph J has reference to merchandise consigned for sale by or on account of the manufacturer. In such case, in addition to the certified invoice, a statement signed by the manufacturer must be filed, declaring the cost of production, including all elements stated in paragraph L. It also provides for merchandise consigned for sale on account of a person other than the manufacturer. In such instance he should file a statement showing the time when, the place where, and from whom purchased. In paragraph K the appraiser is required by all reasonable ways and means to ascertain the actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been imported.

It must be admitted that if there was a market for the merchandise in the country whence the same had been imported, paragraph K would apply, and cost of production or American selling price would not be considered.

Where there is no market in the country of production, or it can not be ascertained to the satisfaction of the appraising officer, or the merchandise is not actually sold or freely offered for sale in the usual wholesale quantities in the open market in the country of exportation, then the appraising officer is justified in ascertaining market value by the cost of production or American selling price method, as provided in paragraph L.

This paragraph provides, with reference to the cost of production—

That when the actual market value, as defined by law, of any article of imported merchandise, wholly or partly manufactured and subject to an ad valorem duty, or to a duty based in whole or in part on value, can not be ascertained to the satisfaction of the appraising officer, such officer shall use all available means in his power to ascertain the cost of production of such merchandise at the time of exportation to the United States, and at the place of manufacture * * *.

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This is a very broad paragraph, giving to the appraising officer vast power in ascertaining market value. If he is unable to do so by the route of cost of production, he then turns to the last part of paragraph L, with reference to American selling price, providing:

The actual market value or wholesale price, as defined by law, of any imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States, and which is not actually sold or freely offered for sale in usual wholesale quantities in the open market of the country of exportation to all purchasers, shall not in any case be appraised at less than the wholesale price at which such or similar imported merchandise is actually sold or freely offered for sale in usual wholesale quantities in the United States in the open market. * * *.

The purpose of the different sections of the statute is to provide means to ascertain market value. The various methods set forth in paragraphs J, K, and L are for the purpose of aiding the appraising officer in arriving at market value. It does not mean that he is limited to one method. The market value as defined by law may be obtained by the price at which it is freely offered for sale in the country of exportation. If the appraising officer can not ascertain market value by that method he is given the right to arrive at it by ascertaining the cost of production, and when he enters that field he shall use all available means to ascertain such cost. If he is still in doubt, and can not by all available means ascertain market value, or if he is not satisfied with the results obtained by the cost of production, then he may take the American selling price. Can he do so under the present statute if there is attached to the invoice the cost of production? The importer says "No," for the reason that he claims the American selling price refers entirely to goods consigned for sale.

In the case at bar what are the facts with reference to consignment? The importer, residing in New York, had an office therein; he had a plant in the Bahamas; and he filled containers with pineapples and shipped them to himself in New York. What is the difference between that and a consignment? What is the meaning of the term "consigned for sale"? Does it give the merchandise a different character than if the manufacturer had brought the goods over personally? Supposing the merchandise was consigned to a broker in New York, that did not give the merchandise a different character. Consignment in that instance but authorized the consignee to pass the title. All "consignment" has reference to is the creation of principal and agent, and authorizing the agent to make sale and receipt for the purchase price. The merchandise still belongs to the consignor; its character was not changed by shipping it to himself rather than "consigning" it to a broker.

The courts have clearly defined what "consign" or "consigned" means. It was held in Sturm *v.* Boker (150 U. S., 312) that "consign"

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or "consigned" in a commercial sense means that the property was committed or intrusted to the consignee for care or sale, and did not by any express or fair implication mean a sale by the one or purchase by the other. Therefore, the fact that in the case at bar the importer shipped the goods to himself and entered them in his own name did not change the transaction under the tariff law of the United States from a consignment of the merchandise by himself to a broker.

The manner in which an article is invoiced or described does not affect the method by which its value should be ascertained. The fact that the goods are shipped in the name of the consignor did not prevent the appraising officer from ascertaining market value by the American selling price. All these measures are cumulative, not restrictive, having but one purpose—*arriving at market value.*

I am at a loss to understand the opinion of my colleagues after reading the following therein:

> There appears to be no dispute that the statement of cost of production and American selling price are each correct and that either of them should be considered as forming the basis for assessment of duty, depending upon which is finally held to be equal to the foreign value for dutiable purposes.

This portion of the opinion nullifies the ultimate conclusion. If this clause has significance, and I say it has, it means that an appraising officer, when in doubt as to the foreign market value, has the discretion of considering as the basis of the assessment of duty the cost of production or the American selling price. No one will dispute that proposition. To destroy it means the repeal of paragraph L of the tariff act of 1913.

That a wide discretion is given to appraising officers is undisputed. With the exercise of that discretion no power on earth can interfere.

We need not consider "consigned for sale" or "sold for export." In either event the sole question presented for solution is the foreign market value, and if discretion is vested in the officer as to the manner and means by which he arrives at that conclusion, his taking the cost of production or American selling price is a procedure in conformity with and not against the statute.

My brothers have given considerable attention to hearings before the tariff commission with reference to foreign and home market price, and quoted extensively from hearings before the Committee on Ways and Means in the enactment of the tariff act of 1909. If there was a serious doubt as to the correct construction of the statute, resort to this method is permitted; but the statute is clear, and no matter what the contention of those desiring the enactment of a different law, the statute expresses in words so clear that "he who runs may read" the three methods of ascertaining market value.

Considerable of the opinion is devoted to views expressed by Col. Albert Clarke, of Boston, and George C. Tichenor. The question

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of the cost of production was not involved in their statements. They were contending that the tariff act provides that all values of imported merchandise should be based on the market value in this country. They did not discuss the cost of production.

Col. Clarke, in the opening statement of his address, declared:

Col. CLARKE. Mr. Chairman, so much has been said on the subject of an American valuation that it has occurred to me that a concise history of that subject in this country might be of interest at this time.

Mr. COCKRAN. What is that; undervaluation?

Col. CLARKE. No, sir; it is as to the valuation of goods subject to an ad valorem duty on the basis of a home valuation instead of a foreign valuation.

Then Col. Clarke proceeded to give a history of the tariff acts since the foundation of the Government, showing that in practically every instance the foreign market value was the basis of assessment. In doing so he gave a complete argument against taking the cost of production as the invariable source of market value. He cited a portion of the annual message of President Fillmore to Congress under date of December 6, 1852, in which the President stated:

All our duties are at present ad valorem. A certain percentage is levied on the price of the goods at the port of shipment in a foreign country. Most commercial nations have found it indispensable, for the purpose of preventing fraud and perjury, to make the duties specific whenever the article is of such a uniform value in weight or measure as to justify such a duty. Legislation should never encourage dishonesty or crime. *It is impossible that the revenue officers at the port where the goods are entered and the duties paid should know with certainty what they cost in the foreign country.* Yet the law requires that they should levy the duty according to such cost. They are, therefore, compelled to resort to very unsatisfactory evidence to ascertain what that cost was. They take the invoice of the importer, attested by his oath, as the best evidence of which the nature of the case admits. But everyone must see that the invoice may be fabricated and the oath by which it is supported false, by reason of which the dishonest importer pays a part only of the duties which are paid by the honest one, and thus indirectly receives from the Treasury of the United States a reward for his fraud and perjury.

Apply that to the case at bar, where the invoice has attached to it the cost of production. The majority opinion says we must take that cost even though the appraising officer may believe it untrue.

Thus the Congress, practically from its inception, took the market value in the foreign country, and by stages of development meeting every contingency arising, ultimately provided for three methods in the act of 1909, namely, the price in the foreign market where the merchandise is freely offered for sale, the cost of production when the foreign selling price can not be ascertained, or the American selling price if these methods fail to satisfy the appraising officer, in any event not less than the entered value. To hold otherwise, and deprive an appraising officer of this discretion, means the destruction of statutory methods of ascertaining market value. Each

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paragraph lodged with the appraising officer discretionary power as to which course to pursue, and the result of a study of the tariff acts since the foundation of the Government demonstrates the wisdom of such course.

The majority opinion nullifies their conclusion by the construction placed on that portion of the statute which refers to merchandise consigned for sale. It is insisted that "consigned for sale" has a peculiar significance by reason of the use of the term "consigned for sale," and thereby may thwart the intention of the statute. The intention of the statute was to ascertain market value. The fact that merchandise has been consigned for sale, the majority opinion states, although there has been no transfer of title, attaches to the merchandise such a halo that it is in a class by itself, and it is thereby within the power of every exporter who has or has not a selling agent in this country to so invoice his merchandise that it will escape one of the routes by which market value may be ascertained. This construction is a differentiation not within the meaning of the statute. In other words, if the goods are invoiced by an American manufacturer from himself to his firm, and are taken from the dock by his partner, the appraising officer is limited to the field in which he may enter to ascertain market value, and is obligated, if there is attached to the invoice cost of production, to take it as the basis of his valuation. How quickly those engaged in importing certain classes of merchandise would accept that construction. The effect it would have on market value can easily be contemplated.

There are no authorities that I can find sustaining this contention.

The statute providing that the appraiser shall by all reasonable ways and means ascertain, estimate, and appraise the actual market value or wholesale price of merchandise is so comprehensive that I would hesitate, even if there was a doubt, to place obstacles in the way of the enforcement of this law. The discretion vested in appraising officers is a necessity. To ascertain value is at all times a troublesome question, and therefore it was a wise provision granting such great power to these officers. Board 2 had jurisdiction of the subject matter, and whether or not its judgment arrived at a correct value is beyond our province to review. Having found it had jurisdiction, and that its action was in accordance with law, by the direct terms of the statute we are prevented from examining the method by which they arrived at such conclusion. A method which establishes value in accordance with the law is the one to follow, and having followed such a course, the judgment of the reappraising board can not be disturbed.

In my opinion the conclusion of the appraising officer was correct, and the action of the collector should be affirmed.

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(T. D. 36251—G. A. 7876.)

Pruning shears and parts thereof.

Pruning shears which are exclusively employed for use in pruning operations in vineyards and in orchards are agricultural implements within the meaning of paragraph 391, tariff act of 1913, and are therein more specifically provided for than under the provision for scissors and shears in paragraph 128 of said act.

United States General Appraisers, New York, March 16, 1916.

[In the matter of protest 777558 of Ducommun Hardware Co. against the assessment of duty by the collector of customs at the port of Los Angeles.]

[Reversed.]

C. A. Ducommun for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

FISCHER, *General Appraiser:* This importation involves 400 pruning shears, together with spare parts thereof consisting of 250 blades, 100 bolts and nuts, and 250 springs and ratchets. Duty was levied on the shears and blades at the rate of 30 per cent ad valorem under the provision in paragraph 128 of the act of 1913 for shears and blades for the same, and on the bolts, nuts, springs, and ratchets at the rate of 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for. The importers claim that all of said articles are properly entitled to free entry under the provision in paragraph 391 for "all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts," or, if not so classifiable, then that the bolts and nuts are properly dutiable at the rate of 10 per cent ad valorem under the *eo nomine* provision therefor in paragraph 123 of said act.

In the case of United States *v.* Boker (6 Ct. Cust. Appls., 243; T. D. 35472), the United States Court of Customs Appeals, in judicially interpreting the meaning of the words "agricultural implements" as used in paragraph 391, referred to the common and ordinary definition of the term "agriculture," and said:

> While, therefore, "agriculture" in its broad application may extend into and include elements of horticulture, viticulture, arboriculture, and other *allied* industries and pursuits, in its primary significance it extends to and embraces only those parts of all such as pertain to human and incidental animal subsistence —the substantial requirements of life (food) and possibly man's comfort (raiment)—and not the merely pleasurable pursuits; the necessities and not the essentially pleasurable or ornamental.

And, further, "that the use of the implement must determine its classification, whether or not an agricultural implement within the paragraph, and that that use, and the determinative fact, is chief use."

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Here, then, we have the court's interpretation of the provisions of paragraph 391, as well as the governing rule which should be applied in the classification of articles thereunder.

In what respect, if any, do the shears in question respond to these statutory requirements? Let the evidence decide.

It appears from the testimony, which is undisputed, that these pruning shears are specially constructed and designed, and are exclusively employed for use in pruning operations in vineyards and in orchards; that for this sole purpose the witness has sold direct, at one time, from 150 to 500 pairs to the Italian Vineyard Co.

Irrespective, therefore, of whether or not the care and cultivation of fruit trees, grape vines, berry bushes, and the like, in vineyards and in orchards may properly be considered as pertaining to horticulture or arboriculture, we have the court's ruling to the effect that, in its primary significance, the term agriculture extends to and embraces such horticultural or arboricultural pursuits as contribute to human and incidental animal subsistence—the substantial requirements of life (food) and possibly man's comfort (raiment)—and not the merely pleasurable pursuits; the necessities and not the essentially pleasurable or ornamental; and that the implements chiefly employed in such pursuits are necessarily agricultural implements within the meaning of paragraph 391.

Accordingly, the court applied this test of classification to the hedge shears which were involved in the Boker case, *supra*, and found that, inasmuch as hedges were purely ornamental, whether on the farm or about the city home, and in no way contributed to the subsistence of man or beast directly or indirectly, the shears which were designed exclusively for trimming such hedges were not agricultural implements within the meaning of the law, and it therefore held them to be excluded from paragraph 391.

In view of such conclusion, the legal question concerning the relative specificness of the two general provisions for scissors and shears in paragraph 128 and for "all agricultural implements of any kind and description" in paragraph 391 was not considered or passed upon by the court. But it was fully presented and carefully considered by this board in the matter of protests No. 758201, etc., of Wiebusch & Hilger (Ltd.), *et al.*, involving the tariff status of certain sheep shears. These articles were conclusively shown to be agricultural implements, and this board in its opinion in that case (which opinion is published concurrently herewith) stated at length its reasons for holding that the provision in paragraph 391 for "all agricultural implements of any kind and description" more specifically covered sheep shears, which were agricultural implements, than did the provision in paragraph 128 for "scissors and shears."

It therefore follows as matter of law that the pruning shears in question having been clearly established to be agricultural imple-

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ments in the sense that those words are used in paragraph 391, are, together with the various parts thereof, entitled to free entry as such under paragraph 391. That claim in the protest is accordingly sustained and the decision of the collector reversed.

(T. D. 36252—G. A. 7877.)

Sheep shears—Agricultural implements.

Sheep shears, specially designed and constructed, and exclusively employed for shearing the wool from sheep, are properly classifiable as agricultural implements under paragraph 391, tariff act of 1913, and entitled to free entry thereunder, as claimed by the importers, rather than dutiable under the provision for shears in paragraph 128.

United States General Appraisers, New York, March 16, 1916.

In the matter of protests 758201, etc., of Wiebusch & Hilger (Ltd.) *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Comstock & Washburn (*George J. Puckhafer* of counsel) and *Brooks & Brooks* (*Frederick W. Brooks, jr.*, of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty* and *Martin T. Baldwin*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

FISCHER, *General Appraiser:* These protests involve the classification under the present tariff act of certain sheep shears employed in removing the wool from sheep. Duty was levied thereon at the rate of 30 per cent ad valorem under the provision in paragraph 128 of said act for "scissors and shears, and blades for the same, finished or unfinished," and they are claimed to be properly classifiable as agricultural implements, and as such entitled to free entry under the following paragraph of said act:

391. Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators, thrashing machines, cotton gins, machinery for use in the manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts.

Rules for determining what constitutes an agricultural implement within the meaning of the law have been enunciated by the United States Court of Customs Appeals in the case of United States *v.* Boker (6 Ct. Cust. Appls., 243; T. D. 35472), which involved the present tariff status of hedge shears used solely for trimming hedges. These, the court held, were not agricultural implements within the purview of the law; and, after quoting at length the common and ordinary

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understanding of the term "agriculture" as defined in the various authoritative dictionaries, the court said:

> While, therefore, "agriculture" in its broad application may extend into and include elements of horticulture, viticulture, arboriculture, and other *allied* industries and pursuits, in its primary significance it extends to and embraces only those parts of all such as pertain to human and incidental animal subsistence—the substantial requirements of life (food) and possibly man's comfort (raiment)—and not the merely pleasurable pursuits; the necessities and not the essentially pleasurable or ornamental.

And in the more recent case of United States *v.* Tower, suit 1639 (6 Ct. Cust. Appls., 562; T. D. 36199), the same tribunal followed its ruling in the Boker case and likewise excluded from paragraph 391 certain rakes which were shown to have been intended for use solely in raking grass clippings from lawns, on the ground that these rakes served no purpose in the production of food from the soil nor in the raising of domestic animals thereon.

However, in the present instance the importers seemingly rest their case upon the court's interpretation of the scope and extent of the language of paragraph 391 as set forth in its decision in the Boker case, as well as on the rules of statutory construction therein laid down as governing the classification of articles for which free entry is claimed as agricultural implements. Accordingly, the proof submitted by these importers is evidently intended to show beyond question that shears of the particular kind represented by the samples in evidence herein and described on the invoices as sheep shears, are actually and exclusively employed for shearing sheep by farmers throughout this country, for which sole purpose they are specially constructed and designed, and that they accordingly possess certain distinctive characteristics not present in shears of more or less similar construction, but which are used for purposes other than shearing sheep, such as grass shears, border shears, and the like. As to this latter class of articles the importers here make no claims, distinctly limiting their protests to such items on the invoices as are described as sheep shears.

The evidence in the case consists of the uncontradicted testimony of three witnesses called on behalf of the importers, the Government offering no proof whatever in support of its contention.

The witness Lawrence is sales manager for Alfred Field & Co., with which firm he has been connected for the past 28 years. He testified that the sale of these sheep shears has come under his personal supervision throughout the past 15 years, during all of which time the said articles were definitely and uniformly known, recognized, and dealt in in the trade and commerce of this country under the name of sheep shears; that as such they were and are sold to and used exclusively by persons engaged in sheep raising throughout the States of California, Oregon, Utah, Washington, Missouri, and Minnesota for shearing the wool from the sheep.

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Furthermore, this witness testified that said articles are uniformly imported and subsequently sold in boxes similar to the sample box in evidence, which boxes bear the name of the manufacturers and are labeled on the top "steel sheep shears" and on one end "sheep shears"; that this practice has been true of his own knowledge during the past 15 years; that the shears in question are primarily designed and constructed for the sole purpose of shearing wool from sheep, and that he never knew them to be sold or employed for any other purpose; that while constructed along the same general lines as are grass shears, the blades of sheep shears are always straight, are composed of a high-grade steel, are fully finished with a smooth and highly polished surface, and have long sharp-pointed ends, whereas those of grass shears are bent, are composed of low-grade steel, and are neither polished nor surface finished; that there is also considerable difference in the wholesale price of the two, the sheep shears selling for $12 per dozen, while grass shears sell for from $3 to $3.50 per dozen.

This testimony is fully corroborated by that of the witness Wiebusch, of the firm of Wiebusch & Hilger (Ltd.), one of the present importing firms. He testified that his firm has been importing and dealing in sheep shears of the kind here in question for the past 30 years, as also in sheep-shearing machines of the particular kind on the invoice covered by protest 758201 and which were returned free of duty as agricultural implements; that the hand shears and the machine shears perform precisely the same kind of work in shearing sheep; that in the former the long sharp-pointed blades are specially adapted for penetrating into the thick wool of the sheep and are provided with a spring, which enables them to open fully of themselves, thus facilitating the process of sheep shearing; that he never knew these shears to be employed for any other purpose.

The witness Farmer testified that he first sheared sheep in 1893, and that he has been practically affiliated with the sheep-shearing industry ever since, having been employed by the United States Government both as deputy ranger and as ranger, the official duty of which brought him into direct personal contact with the stock-raising industry; that in shearing sheep he personally used both the machine and the hand shears, and for two years used hand shears which bore the identical brand appearing on one of the samples in evidence herein; that the essential and distinguishing characteristics present in sheep shears are long and sharp-pointed blades which must be finished smoothly and which have sufficient spring to enable them to rebound after the cutting stroke is made. This witness also stated that in his official travels he observed that farmers usually keep, in connection with their business of raising ordinary garden crops, from 1 to 200 sheep.

This unchallenged testimony conclusively establishes the validity of the contention that these sheep shears are agricultural implements

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within the meaning of paragraph 391, as judicially interpreted in the Boker case. Consequently, they must be accorded free entry thereunder as such unless it can be clearly shown that the provision for shears in paragraph 128 more specifically covers them.

With a view to affirmatively establishing this latter contention, counsel for the Government in his brief cites the case of Quirk *v.* United States (6 Ct. Cust. Appls., 444; T. D. 35983) as here controlling. That case involved the classification of certain budding knives and pruning knives upon which duty was levied under paragraph 128, and which were claimed to be entitled to free entry under paragraph 391 as agricultural implements.

In there holding the former to be the more specific provision, the court pointed out that budding knives and pruning knives were not only *eo nomine* mentioned therein, but that paragraph 128 was so framed as to cover "all knives by whatever name known, including such as are denominatively mentioned in this section, which have folding or other than fixed blades or attachments * * * whether assembled but not fully finished or finished." This descriptive language, the court held, more accurately met the condition of the merchandise than did the provision in paragraph 391 for "all other agricultural implements of every kind and description, whether specifically mentioned herein or not." Moreover, the court also found that the knives there in question were not shown to have been chiefly used as agricultural implements, which use, as stated in the Boker case, is the controlling factor in determining the classification of any article claimed to be free under paragraph 391.

We are fully satisfied, however, that the decision in the Quirk case is not here applicable, let alone controlling, for the reason that it is too plainly apparent that the two cases differ materially both as to the facts as well as to the pertinent provisions of law involved. Indeed, for the court to have held otherwise than it did in the Quirk case would have resulted not only in defeating the clearly expressed purpose of Congress to impose a prescribed rate of duty on the particular classes of knives known as budding and pruning knives, but would also have rendered null and void and of no legal effect whatever the *eo nomine* provisions therefor, because if the latter did not refer to those particular knives, then there was nothing left for the same to cover.

But the situation here is entirely different. The scissors and shears provision is so general in scope that certain individual classes of either of those articles could be held to be excluded therefrom without in any way affecting or impairing the legal effect intended to be given thereto.

We have, therefore, to here determine which of these two competing general provisions of law more specifically covers the sheep

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shears in question. Are they dutiable as classified under the provision in paragraph 128 for "scissors and shears, and blades for the same, finished or unfinished," or, are they more specifically provided for free of duty under the provision in paragraph 391 for "all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts," as claimed by the importers?

Although this precise question of law was presented in the Boker case, the court evidently deemed it unnecessary to pass upon it, since it was there found that hedge shears were not agricultural implements in the sense that term is used in paragraph 391. In so holding, however, the court not only definitely defined just what constituted an agricultural implement within the intent of the legislature, but, as we read it, the decision in effect further held that the language of the paragraph clearly manifested a congressional purpose to make the chief use of an article as an agricultural implement the test of its classification as such under the law, and that the doctrine of chief use should therefore supersede all other rules of construction in arriving at that determinative fact. That such is the plain meaning of the decision is evidenced by the following excerpts therefrom:

> All these considerations imply and necessitate that the use of the implement must determine its classification, whether or not an agricultural implement within the paragraph, and that that use, and the determinative fact, is chief use.
>
> That rule is so well established and of such frequent reiteration by the courts that its suggestion seems sufficient. This court affirmed and applied the rule as to "smokers' articles" in Knauth *v.* United States (1 Ct. Cust. Appls., 334; T. D. 31432); as to "wire rods" in Athenia Steel & Wire Co. *v.* United States (1 Ct. Cust. Appls., 494; T. D. 31528); applied it in Drakenfeld & Co. *v.* United States (2 Ct. Cust. Appls., 512; T. D. 32248); adopted it as to "jute-manufacturing machinery" in United States *v.* Hempstead & Son (3 Ct. Cust. Appls., 436; T. D. 33004); and as to "philosophical and scientific instruments," etc., in United States *v.* Kastor & Bros. (6 Ct. Cust. Appls., 52; T. D. 35323). In fact, no principle is more firmly established in customs adjudication. Magone *v.* Wiederer (159 U. S., 555); Magone *v.* Heller (150 U. S., 70); Cadwalader *v.* Wanamaker (149 U. S., 532); Walker *v.* Seeberger (149 U. S., 541); Chew Hing Lung *v.* Wise (176 U. S., 156); Meyer *v.* Cadwalader (89 Fed., 963); Smith *v.* United States (93 Fed., 194).

Under some circumstances language describing a class may be more specific than that containing a designation *eo nomine*, and an article literally included within such a designation in one paragraph of the customs law may, on account of its relation to a peculiar class, be referred to some other paragraph. Brennan *v.* United States (136 Fed., 743; T. D. 26317).

Directly in point here are the above-cited cases of Kastor and of Knauth. In the former, certain scissors, which in no sense differed from the ordinary scissors of commerce, except that they were marked on the blades "Board of Education," and were destined for

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use in sewing classes in the New York City public schools, were held to be properly entitled to free entry under paragraph 650 of the act of 1909 as philosophical and scientific instruments, rather than dutiable as scissors under the *eo nomine* provision therefor in paragraph 152 of said act.

In the Knauth case, *supra*, the court, in construing a provision for "all smokers' articles whatsoever," said:

> The intensified form of the expression used, together with the far-reaching effect of the qualifying words stated, manifests to our mind a purpose on the part of the legislature to reach out into all branches of trade and commerce and to gather within the dutiable provisions of this paragraph everything used chiefly by smokers, in that pursuit, and for that purpose, wherever else they may occur or within whatever other provisions of the tariff law the merchandise may be included.

Surely, the provision for "all other agricultural implements of any kind and description" is equally as comprehensive as are the words "all smokers' articles whatsoever," and therefore are entitled to be given the same legal effect.

The importers, therefore, unquestionably have a meritorious claim, both with respect to the facts and the law, in contending that the sheep shears in question are agricultural implements, and as such are more specifically covered by the provisions of paragraph 391 than by those of paragraph 128.

This conclusion is entirely consistent with our recent decision, G. A. 7869 (T. D. 36217), in the matter of protests 792704, etc., of C. M. Langley, wherein we held certain lawn mowers which were specially designed for mowing grass on golf courses, lawns, and in parks, to be excluded from the provision for "mowers" in paragraph 391, on the ground that they were not of the class of mowers therein intended to be covered and were necessarily not agricultural implements. Otherwise, it is clear that the term "mowers" would have included lawn mowers, just as the term "shears" would have included these sheep shears, were the latter not more specifically provided for as agricultural implements.

Counsel for the Government, however, advances the extremely novel contention that the court's interpretation of the language of paragraph 391 expressly confines the operation and scope thereof to such implements as are used solely in the cultivation of the soil for the purpose of raising crops which supply food or clothing for man, and that it was not intended to extend to or embrace implements which contribute merely to the harvesting of the wool crop, such as the sheep shears here in question.

This contention is positively negatived by the language of the paragraph which specifically includes within the term agricultural implements such articles as cotton gins, thrashing machines, wagons and carts, and machinery for use in the manufacture of sugar.

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Obviously, none of these latter-named articles have any use whatever in connection with the cultivation of the soil. If wagons and carts are classified by Congress within the category of agricultural implements merely because they are necessarily employed in the removal of farm crops, then with even greater force are these sheep shears within the same class, since they are absolutely essential in connection with the removal of the wool from the sheep in order that it may be placed in its primary commercial condition.

Upon the authority of the decision in the Boker case, *supra*, we hereby sustain the claim under paragraph 391 alleged in these protests, but only in so far as it purports to cover the merchandise described on the invoices as sheep shears. In all other respects the protests are overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, MARCH 14, 1916.

No. 39385.—Protest 777041 of M. L. Eckstein & Co. (New York).

FEATHER TRIMMINGS.—Trimmings composed of ornamental feathers, classified as articles of feathers at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable under the provision in the same paragraph for manufactures of feathers at 40 per cent.

MCCLELLAND, *General Appraiser:* * * * The record shows that the merchandise is imported in 12-yard lengths ready to be cut to required lengths and sewed as trimming on skirts, waists, and sleeves of women's wearing apparel. There is no pretense of claim that it should not be classified as feathers in some form, subject to one of the rates of duty provided therefor in the paragraph under which duty was assessed. Paragraph 347 provides for three different rates of duty on feathers: (1) Feathers, crude, 20 per cent ad valorem; (2) feathers, dressed, colored, or otherwise advanced or manufactured in any manner and not suitable for use as millinery ornaments, 40 per cent ad valorem; (3) artificial or ornamental feathers suitable for use as millinery ornaments, 60 per cent ad valorem; and there is a fourth provision covering "all articles not specially provided for in this section, composed wholly or in chief value of any of the feathers * * * herein mentioned, 60 per centum ad valorem."

Counsel for protestants in his statement of the issue for the record says:

> We claim that by reason of the fact that these are not suitable for millinery ornaments they do not come under that provision in the paragraph, but another one of the same paragraph for manufactures of feathers at 40 per cent.

This, in part at least, is manifestly a misstatement, doubtless unwittingly made.

There is no provision in paragraph 347 for "manufactures of feathers at 40 per cent." The 40 per cent provision, in so far as it applies to feathers, covers only such as are "dressed, colored, or otherwise advanced or manufactured in any manner"; that is to say, feathers which have been treated by certain processes which advanced their

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condition without destroying their identity as such. While manufactures of down are included in this provision, there is absolutely no mention of manufactures of feathers. Neither is such merchandise as that in question included within the third provision, as that only applies to artificial or ornamental feathers suitable for use as millinery ornaments. The fourth provision, however, as already stated, includes articles composed wholly or in chief value of feathers. That such feather trimming as that in question is an "article" within the meaning of the law is not, we think, open to question. In Junge *v.* Hedden (37 Fed., 197) the court defined "articles" as "things manufactured, things unmanufactured, and things partially manufactured."

The collector's assessment of duty was warranted by the statute. His decision is therefore affirmed and the protest is overruled.

No. 39386.—Protest 784002 of W. E. Ellis (St. Albans).

MOLDING—PLANED LUMBER.

McCLELLAND, *General Appraiser:* On October 25, 1915, the board rendered its decision on this protest as follows:

The merchandise consists of planed quarter-round spruce molding. It was assessed with duty at the rate of 15 per cent ad valorem under paragraph 176 of the tariff act of 1913. Claim for free entry is made under paragraph 647 of said act.

An examination of the official sample convinces us that the wood involved has not been advanced except by sawing and planing. Under the decision in United States *v.* Myers (T. D. 35179) it is entitled to free entry, as claimed. The protest is sustained and the decision of the collector reversed.

Subsequently, and within the statutory time, the application of the Government for a rehearing was granted by the board, and the protest was placed upon the calendar of January 4, 1916, for further hearing, at which time a witness, shown to have had 20 years' experience in the lumber business, was called to testify on behalf of the Government. The testimony of this witness shows that the quarter-round pieces in question are produced from rough square sticks of the size desired by running them through what is called a molding machine, described by him as having a top and bottom head and two side heads capable of adjustment to any angle to make any shape according to the knife used, one side head being flat, the other containing an oval knife. The machine thus described would appear to be similar to a molding plane, which is defined by the Century Dictionary as follows:

Molding plane.—In *joinery*, a plane used in forming moldings; a match plane. Such planes have various patterns or convex and concave soles for making the different parts of moldings, as hollows and rounds.

The difference between novelty siding and beaded lumber made by a "planer and matcher" (see United States *v.* Myers, 5 Ct. Cust. Appls., 541; T. D. 35179) and the molding here involved, made by a "molding machine," is accounted for by the shape and number of knives attached to the respective machines, the surfaces of each produced thereby being accomplished at the same time and by one operation.

Although one surface of the molding in question is convex, it is nevertheless planed or smoothed the same as the other two surfaces, which are flat, and has not been further manufactured than sawed and planed.

The testimony confirms our former decision and the protest is again sustained, the decision of the collector being reversed.

No. 39387.—Protest 786309 of John J. Murphy (New York).

TOILET PREPARATIONS.—Merchandise invoiced as "Pini shampoo" and classified as a nonalcoholic toilet preparation at 60 per cent ad valorem under paragraph 48, tariff act of 1913, is claimed dutiable under paragraph 66, 176, or 385, or free of duty under paragraph 649.

Opinion by McCLELLAND, G. A. Protest unsupported; overruled.

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No. 39388.—Protest 794073 of Havana-American Co. (Tampa).

LEAF TOBACCO.—A bale of tobacco classified as all wrapper under paragraph 181, tariff act of 1913, is claimed to contain less than 15 per cent of leaves suitable for wrapper.

Opinion by MCCLELLAND, G. A. On the record presented it was found that the bale in question contained only 5 per cent of wrapper leaves.

No. 39389.—Protest 794074 of M. Valle & Co. (Tampa).

LEAF TOBACCO.—Four bales of tobacco classified as unstemmed wrapper under paragraph 181, tariff act of 1913, are claimed to contain less than 15 per cent of leaves suitable for wrapper.

Opinion by MCCLELLAND, G. A. From the evidence and the invoice price it was found that the tobacco is an unusually high grade, containing more than 15 per cent of wrapper leaves. Protest overruled.

BEFORE BOARD 2, MARCH 14, 1916.

No. 39390.—Protest 776276 of Snow's United States Sample Express Co. (New York).

TUCKED WEARING APPAREL.—Shirt bosoms and blouses composed of cotton, or flax and cotton, and ornamented with loom-woven or plaited tucks, some embroidered, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 256.

Opinion by COOPER, G. A. On the authority of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), it was held that the tucked shirt bosoms and blouses in question, except those that are embroidered, are dutiable under paragraph 256, as claimed.

No. 39391.—Protest 782480–56741 of Marshall Field & Co. (Chicago), and protest 770834 of J. D. Richardson Co. (Detroit).

TURKISH TOWELS.—Turkish towels classified as pile fabrics at 40 per cent under paragraph 257, tariff act of 1913, are claimed dutiable as cotton towels at 25 per cent under paragraph 264.

Opinions by COOPER, G. A. The towels in question were held dutiable under paragraph 264 on the authority of G. A. 7656 (T. D. 35019).

BEFORE BOARD 3, MARCH 14, 1916.

No. 39392.—Protest 765805 of F. H. Shallus (Baltimore).

ANTIQUE FURNITURE.—It is claimed that certain furniture was over 100 years old at the time of importation, and therefore free of duty under paragraph 656, tariff act of 1913.

Opinion by WAITE, G. A. An affidavit mentioning certain articles on the face and having attached thereto a list of the remaining articles contained in the invoice, together with a reference to the consular invoice by number, was held sufficient to cover the items not mentioned on the face thereof. Articles which by the addition of a minor part or some carving or slight embellishment have not been so changed as to destroy their artistic appearance were held to be artistic antiquities entitled to free entry under paragraph 652. Articles constructed within 100 years out of material over 100 years old were held not to be exempt from duty. Abstract 35023 (T. D. 34279) noted. Protest sustained in part.

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BEFORE BOARD 1, MARCH 16, 1916.

No. 39393.—Protests 760817, etc., of Wm. Anderson & Co. et al. (New York).

FLANNELS.—Goods returned as wool chief value or wholly of wool, classified at 35 per cent ad valorem under paragraph 288 or 290, tariff act of 1913, are claimed dutiable as flannels at 25 per cent under paragraph 289.

Opinion by BROWN, G. A. It was found that the goods in question consist principally of shirting flannels used for waists, shirts, and infants' wear. They were held dutiable under paragraph 289, as claimed. Protests sustained in part.

No. 39394.—Protest 794173 of American Express Co. (New York).

IMITATION PEARL BEADS.—Merchandise reported by the appraiser to be imitation pearl beads loosely strung, classified at 35 per cent ad valorem under paragraph 333, tariff act of 1913, is claimed dutiable as imitation pearls or so-called synthetic or reconstructed pearls, at 20 per cent.

Opinion by SULLIVAN, G. A. On the authority of Cohn *v.* United States (5 Ct. Cust. Appls., 339; T. D. 34533), affirming G. A. 7561 (T. D. 34415), the imitation pearls in question were held properly classified under paragraph 333.

No. 39395.—Protests 789651–57723, etc., of Sears, Roebuck & Co. (Chicago).

IMITATION PEARL BEAD STRINGS.—Strings of graduated imitation pearl beads classified as articles composed wholly or in chief value of beads at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as imitation pearl beads loosely strung for facility in transportation only, at 35 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. It was found that the beads in question are strung for convenience so that they will hold the same relative positions in restringing. They were held dutiable at 50 per cent under paragraph 333, as classified.

No. 39396.—Protest 791632 of Geo. Borgfeldt & Co. (New York).

TOY BRACELETS.—Tiny imitation watches attached to flimsy straps of imitation leather with small nickel-plated buckles, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as toys at 35 per cent under paragraph 342.

Opinion by SULLIVAN, G. A. The bracelets in question were found too small to encircle the wrist of a child. They are used for dolls and were held dutiable as toys under paragraph 342, as claimed.

No. 39397.—Protests 792480, etc., of Geo. Borgfeldt & Co. (New York).

SEWING MACHINES—TOYS.—Small sewing machines operated by hand instead of the usual foot pedal, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed free of duty as sewing machines under paragraph 441.

Opinion by SULLIVAN, G. A. The machines in question were found capable of practical use and not within the definition of toys in Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115). On the authority of Abstract 39148 they were held free of duty under paragraph 441.

No. 39398.—Protests 797453, etc., of Frank P. Dow Co. et al. (Seattle and Baltimore).

EASTER BASKETS—TOYS.—Merchandise invoiced as baskets, and Easter basket novelties and baskets, classified as toys at 35 per cent as valorem under paragraph 342, tariff act of 1913, is claimed dutiable as baskets at 25 per cent under paragraph 175.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the Easter baskets in question were held dutiable under paragraph 175, as claimed.

No. 39399.—Protest 797872 of American Express Co. (New York).

TIMERS.—Timers classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

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Opinion by SULLIVAN, G. A. Upon stipulation of counsel that the merchandise is of the same character as that passed upon in G. A. 7827 (T. D. 35971) it was held dutiable under paragraph 167, as claimed.

No. 39400.—Protests 782734, etc., of American Express Co. et al. (New York).

AZIMUTH MIRRORS, SEXTANTS, AND OCTANTS—OPTICAL INSTRUMENTS.—Azimuth mirrors, sextants, and octants, classified as optical instruments under paragraph 93, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Bliss (6 Ct. Cust. Appls., 433; T. D. 35980), affirming G. A. 7697 (T. D. 35220), the nautical instruments in question were held dutiable under paragraph 167, as claimed.

No. 39401.—Protests 784404, etc., of B. Illfelder & Co. (New York).

COMPASSES—TOYS.—Small metal compasses commonly used by school children to draw circles, classified as toys under paragraph 342, tariff act of 1913, at 35 per cent ad valorem, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel, and on the authority of Abstract 39086, the compasses in question were held dutiable under paragraph 167.

No. 39402.—Protest 781570 of Eug. Dietzgen Co. (New York).

COMPASSES.—Compasses classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel that the compasses are of the same character as those passed upon in G. A. 7824 (T. D. 35949) they were held dutiable at 20 per cent under paragraph 167, as claimed.

No. 39403.—Protest 787133 of Baltimore & Ohio Railroad Co. (Baltimore).

GLASS FLOWER BLOCKS.—So-called flower blocks of glass perforated with holes to receive the stems of flowers, classified as blown glassware at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable as manufactures of glass at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. The articles were found to be made of molded glass, not blown, and held dutiable as manufactures of glass under paragraph 95, as claimed.

No. 39404.—Protest 781457 of American & European Forwarding Co. (New York).

BOTTLES OF METAL AND GLASS—TOOTHBRUSH GLASSES.—Merchandise classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed to be bottles of metal and glass, metal chief value, and toothbrush glasses in chief value of blown glass dutiable under paragraphs 167 and 84, respectively.

Opinion by SULLIVAN, G. A. The bottles in question were held dutiable as manufactures in chief value of metal under paragraph 167. The toothbrush glasses, intended to be carried in a traveling bag or tourist case, were found to be in chief value of blown glass, dutiable at 45 per cent under paragraph 84.

No. 39405.—Protests 778696, etc., of Fensterer & Ruhe (New York).

METAL FLASHLIGHT CASES.—Flashlight cases classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel that the flashlight cases in question are of the same character as those passed upon in G. A. 7794 (T. D. 35822), they were held dutiable under paragraph 167, as claimed.

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No. 39406.—Protest 770356 of Frank Woolsey Co. (Portland. Oreg.).

CYLINDER GLASS, SILVERED.—Cylinder glass classified as polished and silvered, at 4 cents per square foot, under paragraphs 85, 86, 89, and 90, tariff act of 1913, is claimed dutiable as common window glass or cylinder glass, silvered, under paragraphs 85 and 89.

Opinion by SULLIVAN, G. A. The glass in question was found to be common window glass, silvered, not polished. It was held dutiable under paragraphs 85 and 89, as claimed.

No. 39407.—Protests 773903, etc., of M. G. Cohn & Co., and protest 763052 of Tice & Lynch (New York).

CELLULOID SHEETS.—Celluloid sheets classified as polished at 40 per cent are claimed dutiable as not polished at 25 per cent under paragraph 25, tariff act of 1913.

Opinions by SULLIVAN, G. A. Upon stipulation of counsel the celluloid sheets in question were held dutiable as "not polished, wholly or partly," under paragraph 25. United States *v.* Cohn (6 Ct. Cust. Appls., 426; T. D. 35979) followed.

BEFORE BOARD 2, MARCH 16, 1916.

No. 39408.—Protest 791032 of Wm. H. Stiner & Son (New York).

TUCKED WEARING APPAREL.—Cotton waists made in part of tuckings, dresses, and other articles of wearing apparel of wool and silk, made in part of ornaments and netting, the wool and silk being the component materials of chief value, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as cotton, wool, or silk wearing apparel under paragraph 256, 291, or 317.

Opinion by COOPER, G. A. On the authority of G. A. 7597 (T. D. 34755) and G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the wearing apparel in question was held dutiable as cotton, wool, or silk, according to the component materials of chief value, under paragraphs 256, 291, and 317, respectively.

BEFORE BOARD 3, MARCH 16, 1916.

No. 39409.—Protest 789000 of Wilfred Schade Forwarding Co. (St. Louis).

UNAUTHORIZED IMPORTATION—LIABILITY FOR DUTY.

WAITE, *General Appraiser:* Claim is presented here for remission of duty on a certain quantity of buttons in a package inclosed in a case, which quantity importers did not order or purchase or intend to import. They discovered the excess on arrival of the goods at their warehouse after entry. The examiner makes notation on the invoice showing there were 1,300 cards, of 4 dozen each, over the amount mentioned in the invoice. It appears from the testimony that the importers on discovering the excess immediately took the goods to the appraiser's stores and offered to deliver them, at the same time notifying the Government officials that they did not order the goods and they were of no use to them. The Government officials declined to receive the goods, but assessed duty. The question here is whether the duty charged upon this excessive merchandise should be remitted. We think it is plain that where a person has not ordered, purchased, or in any way been instrumental in the importation of goods, he should not be required to receive them or pay duty thereon. In the case at bar we think the importers have done everything they could to divest themselves of these goods, and should not be compelled to pay duty. A very similar situation is found in the case of Minneapolis Floral Co., Abstract 37631, which cites Colpas case, G. A. 6891 (T. D. 29663). The protest is sustained.

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(T. D. 36253.)

Leather cue tips.

BRUNSWICK-BALKE-COLLENDER CO. *v.* UNITED STATES (No. 1630).

LEATHER CUE TIPS, HOW DUTIABLE.

Cue tips, made by cutting with a round stamp a sheet of soft and a sheet of hard leather glued together, most of them having the soft-leather side rounded on the lathe, are too far advanced in condition to be admissible free under paragraph 530, tariff act of 1913, as "* * * leather not specially provided for * * * and leather board or compressed leather." Since they are a manufacture of leather, they are more specifically provided for by paragraph 360, as such, than by paragraph 385 as a manufacture not specially provided for, and, in accordance with the administrative practice under the tariff act of 1909, sanctioned by reenactment in the act of 1913, they are so dutiable.

United States Court of Customs Appeals, March 9, 1916.

APPEAL from Board of United States General Appraisers, Abstracts 38595 and 38865.

[Affirmed.]

Crim & Wemple (*William L. Wemple* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise involved in this case consists of cue tips. It was assessed for duty as a manufacture of leather under paragraph 360 of the act of 1913. The importers protested, claiming free entry under various paragraphs, but has limited its discussion under claim for free entry to paragraph 530. The claim was also made, and is urged here, that if not free the merchandise is subject to duty at 15 per cent only, under paragraph 385, as an unenumerated manufactured article.

The evidence discloses that the merchandise consists of rounded leather tips, consisting of two kinds of leather, the upper leather, which is soft, and a hard leather piece, which are glued together. The hard leather forms the foundation for the soft leather, and when applied to the cue is glued to the wooden end of the cue and holds to the cue, and the evidence shows that the cue tip holds stronger than if the hard leather were not present. It protects, also, the upper leather and prevents it becoming spread out over the cue. After the two have been glued together in the piece they are stamped with a stamp of various sizes to produce the various sizes of tips. Some of them are imported without other process, and some of them are put on a lathe and turned round to shape them—that is to say, the

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upper surface of the tip is rounded. The importation in question consists, according to the testimony, mostly of those which have been rounded in shape, but there are some that have not been subjected to this process. There is, however, no evidence to show the quantity of each, the testimony being that most of these tips are rounded, most of them having been put upon the lathe after they have been stamped out.

Paragraph 530, under which free entry is claimed, reads;

530. All leather not specially provided for in this section and leather board or compressed leather; leather cut into shoe uppers or vamps or other forms suitable for conversion into boots or shoes; boots and shoes made wholly or in chief value of leather; leather shoe laces, finished or unfinished; harness, saddles, and saddlery, in sets or in parts, finished or unfinished.

It is clear that the only provision in this paragraph under which these articles could be admitted is that providing for "all leather not specially provided for in this section and leather board or compressed leather." The articles here can not fall within this provision, for the reason that within any rule that may be taken they are advanced beyond the condition of leather, leather board, or compressed leather.

As to the claim under paragraph 385 for manufactured articles, it is perhaps sufficient to say that if the merchandise in question here has reached the dignity of manufactured articles, the provision for manufactures of leather is more specific than the general provision for manufactures not specially provided for.

We think the facts bring this importation clearly within the terms of paragraph 360. This paragraph is a reenactment of paragraph 452 of the act of 1909, with the exception of the provision inserted in the present act covering parchment, by the insertion of the words in the appropriate place after leather "or parchment." The paragraph as it now stands reads as follows:

360. Bags, baskets, belts, satchels, card cases, pocketbooks, jewel boxes, portfolios, and other boxes and cases, made wholly of or in chief value of leather or parchment, not jewelry, and manufactures of leather or parchment, or of which leather or parchment is the component material of chief value, not specially provided for in this section, thirty per centum ad valorem; any of the foregoing permanently fitted and furnished with traveling, bottle, drinking, dining, luncheon, and similar sets, thirty-five per centum ad valorem.

This court has had before it in a number of cases the statute of 1909 and has laid down a rule which covers the present importation. The first was Tilge & Co. *v.* United States (3 Ct. Cust. Appls., 97; T. D. 32360), which case reviews at length the authorities upon the subject and holds that "manufactures of leather," as the term appeared in paragraph 452 of the act of 1909, covered articles the

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component material of which was leather, and which had been advanced to a state adapting them and fitting them for a particular use. The articles there in question were hat sweats. It was said:

The articles are made of leather and are known to the trade as "hat sweats." They have a name and form not borne by the original material from which they were manufactured. They subserve a purpose and are adapted to a use for which the leather out of which they were made is not fitted or available. Considered as "hat sweats" they are finished articles and, barring the cutting to size, they are ready without further manipulation to be put immediately to the use for which they were made. Such articles are, in our opinion, finished manufactures, and the board was correct in so finding.

The case of Tidewater Oil Co. *v.* United States (171 U. S., 210) was cited in support of this ruling.

The question was again before the court in Devoy *v.* United States (3 Ct. Cust. Appls., 444; T. D. 33034). The merchandise there in question consisted of pieces of leather cut ready for use as book backs. Some of the book backs were lettered and some were not. But of the latter it was said, "as a matter of fact they were of such shape and finish and were so processed as to plainly indicate that they were designed for use as book backs and that they were commercially fit for no other purpose." These were held dutiable under paragraph 452 of the act of 1909.

In these two cases it is pointed out that there had been an administrative construction of the term "manufactures of leather," which included articles like those there in question within that term, and that this administrative construction had had legislative approval by reenactment. The evidence in the present case shows the same history as to cue tips.

The reasoning of the cases cited brings the present importation clearly within the rule established, and the decision of the board sustaining the assessment is *affirmed.*

(T. D. 36254.)

Salts of antimony.

UNITED STATES *v.* INNIS, SPEIDEN & CO. (No. 1638).

1. CONSTRUCTION OF PARAGRAPH 144, TARIFF ACT OF 1913—STATUTES CONSTRUED AS WRITTEN WHEN POSSIBLE.

The words "antimony oxide, salts and compounds of" in paragraph 144, tariff act of 1913, are plain and unambiguous. It is not apparent that they are either inoperative or in conflict with other provisions indicating a congressional intent at variance with the chosen phrase, and it can not be said that Congress intended a comma after "antimony."

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2. ANTIMONY SULPHIDE, HOW DUTIABLE.

Antimony sulphide is not a salt or compound of antimony oxide, and can not be dutiable under paragraph 144, tariff act of 1913; not being more specifically provided for elsewhere, it is relegated to the residuary provision for chemical salts and compounds in paragraph 5.

United States Court of Customs Appeals, March 9, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38660.

[Affirmed].

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

Allan R. Brown for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise in this case consists of sulphide of antimony, which substance is in fact a salt or compound of antimony, but not a salt or compound of antimony oxide. It was assessed for duty at 25 per cent ad valorem under the last clause of paragraph 144, tariff act of October 3, 1913, which paragraph reads as follows:

144. Antimony, as regulus or metal, and matte containing antimony but not containing more than ten per centum of lead, ten per centum ad valorem; antimony oxide, salts, and compounds of, twenty-five per centum ad valorem.

The Board of General Appraisers held that the merchandise was not covered by the language of the provision cited, and that it was therefore relegated for classification to the residuary provision for chemical salts and compounds in paragraph 5 of the tariff act. The Government appealed.

The contention on behalf of the Government is that the last clause of the paragraph should be read as though the comma preceded the word "oxide," and reliance is placed upon the rule that the grammatical construction of a sentence will at times give way to obvious intent. But we apprehend that before this rule can be invoked it must be apparent that the language as written is either inoperative or in conflict with other provisions, indicating a congressional intent at variance with the terms of the chosen phrase. Neither condition is here present. The Government admits that there are such things in existence as salts and compounds of antimony oxide, and attention is not directed to any other enacted provision which detracts from the force of the language employed. This language is plain and unambiguous. Salts and compounds are provided for. When we ask what salts and compounds, we find these terms are restricted by the word "of," which obviously refers back to antimony oxide. The clause has the identical meaning which it would bear if it had read "salts and compounds of antimony oxide."

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The language of the statute being plain and unambiguous, we are not warranted in disregarding its terms or in entering the field of speculation with a view to ascertaining an unexpressed intent or in ascribing to the language employed a meaning other than that which the plain terms import. Breck & Son *v.* United States (2 Ct. Cust. Appls., 26; T. D. 31576); Maltus & Ware *v.* United States (6 Ct. Cust. Appls., 525; T. D. 36146).

Affirmed.

(T. D. 36255.)

Stipulation of fact.

SALOMON & CO. *v.* UNITED STATES (No. 1626).

STIPULATIONS OF FACT AND OF LAW, EFFECT OF.

Only the parties are interested in the *facts* of a case, and their agreed statement of them concludes the court. The public also is interested in the *law*, and their agreed statement of it would not conclude the court.

United States Court of Customs Appeals, March 9, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38109.

[Reversed.]

Comstock & Washburn (*Albert H. Washburn* and *J. Stuart Tompkins* of counsel) for appellants.

Bert Hanson, Assistant Attorney General, for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

In this case the following stipulation was made and submitted to the Board of General Appraisers at or before the hearing of the protest by that tribunal, and is before us:

It is hereby stipulated and agreed by and between counsel for the importers and Assistant Attorney General for the United States that the protest above named covers wood pulp—

(A) Produced in and exported directly to the United States from a nation or country with which the United States had at the time of exportation and entry a treaty of amity and commerce containing favored-nation provisions, and that such exportation was made directly to the United States from the nation or country of production or manufacture via one foreign port or place.

That said pulp was—

(B) Made out of wood grown in the country of production.

(C) That no export duty, export license fee, or other export charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise) has been imposed upon said wood pulp; nor has any prohibition or restriction in any way of the exportation (whether by law, order, regulation, contractual relation, or otherwise, directly or indirectly) been imposed upon said wood pulp or wood, or wood pulp or wood of like character.

(D) That except as noted in paragraph A of this stipulation said wood pulp is of the same character for tariff purposes as that covered by suit 894, American Express

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Co. *et al.* *v.* United States, and suit 895, F. Bertuch & Co. *et al.* *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434).

It is further stipulated and agreed that this protest is limited in its application to 800 bales of Swedish unbleached wood pulp marked "Sweden," under invoice of Hugo Harting, dated April 3, 1913.

Said protest 701836 is submitted for decision under this stipulation.

COMSTOCK & WASHBURN,
Attorneys for Importers.
BERT HANSON,
Assistant Attorney General, for the United States.

Dated April 17, 1915.

No evidence was offered by either party.

Duty had been assessed under paragraph 406 of the tariff act of 1909, and in the protest free entry was claimed by virtue of the most-favored-nation clause in existing treaties between the United States and Sweden and the United States and Sweden and Norway, in conjunction with section 2 of the act of July 26, 1911, which, among other things, provides that wood pulp, in order to be entitled to free entry thereunder, must be the product of Canada and imported directly therefrom into the United States.

As appears from its opinion, the board did not regard as conclusive the provision of the stipulation that the importation was made directly to the United States from the nation or country of production or manufacture via one foreign port or place, but examined the invoice, the material part of which, as stated by the board, is as follows:

HAMBURG, *April 3, 1913.*

Invoice of 2,000 bales of wood pulp, * * * purchased by Messrs. Felix Solomon & Co. * * * of New York * * * from * * * Hugo Hartig * * * of Hamburg * * * to be shipped per steamship *Hannover* via Hamburg to Portland, Me. * * *

Sweden.

5 HH 800 bales of Swedish unbleached sulphate wood pulp kg. 101600....M 15.15240

It then proceeded to the following decision:

From the invoice it will be seen that the consignor is a merchant of Germany, and that the merchandise itself is a product of Sweden. It therefore appears that the merchandise in question was produced in Sweden, shipped from there to Germany, and from Bremen, Germany, consigned to the importer at the port of Portland, Me. The merchandise was not imported from the country of production "directly into the United States," but entered into and became a part of the commerce of Germany. See United Cigar Stores Co.'s case, G. A. 7026 (T. D. 30643). The protest is overruled.

BYRON S. WAITE,
EUGENE G. HAY,
Board of United States General Appraisers.

Thereupon the importers duly applied for a rehearing, stating in their application that the law was well settled that "transshipment of merchandise in one country does not prevent it from being imported from some other country directly into the United States."

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In support of that proposition United States *v.* United Cigar Stores Co. (1 Ct. Cust. Appls., 450; T. D. 31505) was cited and it was averred that the stipulated facts brought the case within that holding. To the petition a through bill of lading was annexed accompanied by an affidavit, both of which in one view tended to support the stipulation and were annexed and referred to in the petition for the purpose, as it was in substance said, of showing that the stipulation was warranted and the board in error. Thereupon the Government, by its present Assistant Attorney General, in its consent in writing filed with the board, among other things stated: "We not only consent to such rehearing, but we join in the importers' request," closing the same with the following: "To the end that absolute justice may be done, the Government asks that the matter be reopened in order that the importers may put before the board all of the facts."

Thereafter the following decision upon the petition for rehearing was entered:

The board having considered the application of the protestants, made through their attorneys, for a rehearing in the above entitled case, the same is hereby denied.

The importers appealed upon the merits, and in substance here claim that the stipulated facts are conclusive in their favor, and that the board was bound thereby.

The Government in its brief, while suggesting that if the board had had nothing before it but the invoice it would have been justified in its conclusion, frankly states that it does not ask that its decision be affirmed because to do so would be a repudiation of the stipulation. It also concedes that the importers relied upon the stipulation before the board, as they had a right to do, and offered no evidence; that it was and is conclusive of the facts; that the invoice should not be weighed against it; that it was not necessary to submit to the board the question of whether the Government was justified in making the concession; and that it might be said there was a presumption that a representative of the Government had investigated the facts and had learned that there was a direct shipment before the stipulation was entered into.

The Government further cites authorities to the effect that this stipulation upon the facts acts as an estoppel upon the parties thereto and is conclusive of all matters included therein and closes its brief by expressly saying that the "Government can not now and does not ask that the decision of the Board of General Appraisers be affirmed."

Other than as we have set forth the board presents no reasoning upon which its decision is based.

We are clear that the board erred in failing to take the stipulation as conclusive upon the relevant facts therein set forth, notwithstanding some apparently inconsistent inferences might be drawn from the

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invoice. The proper representative of the Government must have been satisfied (because there is no suggestion that he has been deceived) that the *facts*, as set forth in the stipulation, were such as could be proven and the board was concluded thereby equally as if they had been proven. It would be a strange thing if litigants or their accredited representatives could not get together and settle for themselves and the court what were the relevant facts touching the litigated issues. Time and expense of parties as well as the court are often thereby saved and a speedy determination of the issue facilitated. The right to do this, however, must not be confounded with an attempt to stipulate as to the law. This is a matter ordinarily for the court's determination and is not a proper subject for agreement, although it often happens that there is no disagreement as to what the law may be. If it were undertaken, for instance, to stipulate that an agreed statute should receive a stated interpretation it is at once manifest that such a stipulation could not control the court, whose function is to determine for itself that particular thing. The difference in the two instances is that the *parties* only are interested in the facts in issue between them, while the *public* is interested in the interpretation of the statute. For a sufficient discussion of the effect of stipulations see 36 CYC, 1279–1298.

The Government's attitude in this case is commendable. Upon the stipulated facts and upon the authority of the cases therein referred to the judgment of the Board of General Appraisers is *reversed*.

(T. D. 36256.)

Clo-clo braids.

UNITED STATES *v.* MACY & CO. (No. 1636).

1. CONCESSION OF LAW, EFFECT OF.

A party's concession as to a matter of law does not conclude the court

2. EVIDENCE—PRIMA FACIE PRESUMPTIONS.

The appraiser's report and the collector's assessment are only prima facie correct.

3. COMMERCIAL DESIGNATION, EFFECT OF.

The designation of the merchandise by the invoice and the record as "clo-clo braids" is not sufficient to make it braids.

4. BRAIDED—MADE OF BRAIDS.

An article having a cover made on it by braiding threads or filaments is not made partly of braids: to be made partly of braids an article must be made in part of an article which has had a separate existence as braid.

5. "CLO-CLO BRAIDS," HOW DUTIABLE.

"Lead and cotton clo-clo braids," merchandise consisting of pieces of lead molded upon a flax cord, the whole being covered by tubular cotton braiding, lead being the component material of chief value, are not dutiable as being in

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part of braids, under paragraph 358, tariff act of 1913; but as being in chief value of lead, under paragraph 167.

United States Court of Customs Appeals, March 9, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7792 (T. D. 35798).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

McLaughlin, Russell, Coe & Sprague and *Sharretts, Coe & Hillis* (*Thaddeus S. Sharretts* and *Edward P. Sharretts* on the brief) for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The answer to the protest in this case is that the merchandise described on the invoice as "lead and cotton clo-clo braids" consists of dress trimming composed of a cotton braid wound around lead, the cotton braid chief value. It was returned for duty as a manufacture or article in chief value of cotton braid at 60 per cent ad valorem under the last part of paragraph 358, act of 1913.

Duty was assessed in accordance with the above advisory classification. The importers protested, specifying many grounds thereof, but before the Board of General Appraisers and this court rely wholly upon the claim that the merchandise is dutiable under paragraph 167 of the tariff act of 1913 as composed in chief value of lead.

At the hearing of the protest by the board only one witness, who testified for the importers, was called. She said that the official sample attached to the protest represented the importation, that it was composed of lead molded on cord and then covered with cotton; that she was familiar with the uses to which it was applied, which were, she said, in "weighting down" dresses, coats, portieres, draperies, and other articles upon which it was placed in a manner to conceal it from view, and that, so far as she knew, it could not be used for any other purpose. No other use was or is shown or claimed. Upon the request of the importers the sample was sent to a Government analyst to determine the component material of chief value. He reported that lead was such component material, the proportions being lead, 67.79; cotton, 29.60; and hemp, 2.61 per cent. The correctness of this report is not denied.

The Board of General Appraisers sustained the protest. In describing the article it said in its opinion that it came in running lengths; that it had a linear core or center composed of a flax cord, on which were molded at regular intervals of about one-fourth of an inch apart uniformly shaped pieces of lead measuring about one-half of an inch in length, one-fourth of an inch in width, and

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one-eighth of an inch in thickness; and that the whole article was completely covered with tubular cotton braid.

The board further said:

As has already been stated, the article is composed in chief value of lead, and therefore it is covered by the terms of paragraph 167. But it is also made in part of braid, and hence included within the language of paragraph 358. It has been held, however, that the provisions of paragraph 358 are limited to "articles in chief value of threads, yarns, and filaments." Loewenthal & Co. *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464). The article before us is not composed in chief value of "yarns, threads, or filaments," but is composed in chief value of lead, and it follows that it is excluded from paragraph 358.

The Government, appealing, distinctly states that it does not claim the merchandise is directly provided for as braids, but bases its claim for error upon the assumption that the merchandise is an article made in part of braid composed of threads or filaments, contending that, upon this assumption, it is immaterial whether the component material of chief value is threads or filaments, because that limitation is not found in the paragraph.

We quote here so much of paragraph 358 as is applicable:

358. * * * Braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; * * * and articles made in whole or in part of any of the foregoing fabrics or articles; all of the foregoing of whatever yarns, threads, or filaments composed, sixty per centum ad valorem.

The importers concede in their brief that the official sample is made in part of braid, but contend that nevertheless it is excluded from paragraph 358 upon the ground stated by the board in the quoted part of its opinion.

Before we accept this concession of importers it seems well to review the facts here and the issues involved. The answer to the protest shows the merchandise was invoiced as "clo-clo braids" and that it consists of dress trimmings composed of cotton braid wound around lead. The testimony shows that it is lead molded on a cord and then covered with cotton and that its only known use is to weight down garments, draperies, and other articles. The merchandise itself, as might be expected from the description already given, presents the appearance of lumps about the size of the pieces of lead described by the board connected by a string or cord passing longitudinally through the center of each, both the lumps and the cord being tightly inclosed or covered by a woven or braided covering. That portion of the official exhibit which is between the lumps looks like a cord about three thirty-seconds of an inch in diameter.

There is no proof as to how this so-called "clo-clo braid" is manufactured, except as already stated, nor is there any proof or claim of commercial designation. Assuming the collector's assessment to be in accord with the advisory classification for duty as a manufacture

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or article in chief value of cotton braid, the prima facie correctness thereof is sufficiently rebutted by the evidence that it is not in chief value of such braid. The correctness of the appraiser's report is still further successfully assailed in that it is clearly shown that it is neither a trimming nor used as such, because the concealed weighting down use alone can not be said to be a trimming use.

There remains, then, for determination the precise issue as to whether it can be said that the article is composed in part of braid. In order to declare that a thing is made in part of braid, it must appear that braid, as that word is commonly understood, has been brought into existence and is one of the materials used in making the article under examination.

The importers' concession would obviate a consideration of this question, but we are not disposed to accept the same, because it would place this court in the attitude of regarding as a braid something which we do not think has ever attained that status, condition, or entity. This concession may have resulted from the board's finding or may have been made for the purpose of obtaining a decision upon a secondary issue, but in any event evidently was not made for the purpose of inducing a reversal of the board in view of the fact that the position of the importers naturally is that its judgment is correct.

Manifestly the word "braid" may be used in various senses, according to the subject referred to, as braids of hair or straw. As applied to fabrics, the statute suggests that braids may be made in the loom, on a braid, knitting, or lace machine, or by hand.

Lexicographers, we think, substantially all agree when defining "braid" as applied to fabrics made of strands or threads that it is a narrow band or tape and is used for binding, trimming, or ornamenting. See Standard, Century, Webster's, and Murray's (New English) dictionaries, and also Encyclopædia Britannica. It is unnecessary to quote from them all, as the following, taken from the Standard Dictionary, is substantially typical:

> A narrow flat tape or woven strip for binding the edges of fabrics or for ornamenting them.

In Spons's Encyclopædia (vol. 3, p. 1762) it is said, speaking of various fabrics, that—

> Small wares, as ordinarily understood, are mainly allied to textiles in the materials of which they are composed, the manner of their fabrication, and their ultimate uses. They may be divided into three great classes: (1) For purposes of attire, (2) for upholstery uses, and (3) in which may be grouped the numerous articles ordinarily denominated fancy goods. The first-named division is probably the most extensive. In this "braids" form a considerable class of themselves. * * * Most of these are made in various widths (¼–2 inches). * * * The texture of plain braids is usually alike on both sides. * * * "Bindings" are a kindred article to braids, but usually of a rather different texture; the two sides are not alike. * * * "Cords" are composed of the same materials as braids, and, as their name indicates, are round instead of flat.

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While it may not be clear that judicially the meaning of the word "braid" has been definitely settled, yet it was considered by this court in Morimura Bros. *v.* United States (6 Ct. Cust. Appls., 475; T. D. 36119), in which the definition from the Standard Dictionary, above referred to, was quoted with approval. See also United States *v.* Ewing & Clancey (3 Ct. Cust. Appls., 333; T. D. 32624).

The so-called "Featherstitch braid cases"—see United States *v.* Baruch (223 U. S., 191; 172 Fed., 342; 159 Fed., 294)—while hardly authority for the meaning of the word "braid" in common understanding, are nevertheless consistent therewith in that the merchandise there under consideration consisted of narrow woven strips bearing a featherstitched ornamentation. See also Steinhardt *v.* United States (121 Fed., 442), where the same Standard Dictionary definition was referred to with apparent approval, although not directly involved.

The fact that the merchandise before us is referred to as a "clo-clo braid" does not, in view of the record, bring that article within the common meaning of the word "braid" as is in effect conceded by the Government, and we are unable to conclude that the entity braid within the common meaning of the term has ever existed or is found in the merchandise under consideration here. The nearest approach thereto is its covering, and this is the basis of the Government's claim as to component material. The appearance of the finished article shows that this covering was braided or woven upon the cord after the lead had been molded thereon. The covering, then, never had the entity of braid; it never had an independent, separate existence as an article or material; it never was designed to be used for trimming, for ornamentation, or for binding; it was never either a flat band or tape, nor was it a tubular tape or braid. Its first appearance was in the completed article before us, and it never had any other existence.

Upon this phase of the question the case of Ulmann *v.* United States (4 Ct. Cust. Appls., 77; T. D. 33363) is somewhat analogous. There an article termed a "coronation cord" was involved. There was no proof of commercial designation, and it was held that a so-called cord containing elliptical or oval lumps, through the center of which passed the core threads, the whole being covered by threads spun or wound around the same, was not a cord within the common acceptation of the word as contained in paragraph 349 of the tariff act of 1909. Later, however, the same article, upon a different record (see Ulmann *v.* United States, 5 Ct. Cust. Appls., 357; T. D. 34551) was, by reason of a long-continued, recognized administrative practice to that effect, held to be a cord within the same paragraph. In the case now at bar there is no showing as to the previous administrative practice.

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In Burlington Venetian Blind Co. *v.* United States (1 Ct. Cust. Appls., 374; T. D. 31456; also a case of the same title in 3 Ct. Cust. Appls., 378; T. D. 32967), and in United States *v.* Walter (4 Ct. Cust. Appls., 95; T. D. 33271), we considered the meaning of the word "tapes" as contained in paragraph 349 of the act of 1909. It was concluded that the so-called "ladder tapes" involved in those cases, which consisted of two long strips of woven fabric united at regular intervals by means of much lighter short woven strips, the entire articles resembling a ladder, were not tapes in the common meaning of the word. It appeared that the so-called "ladder tapes" were produced by one fabrication, and it was held that in an article so made the entity tape or tapes in the common meaning of the term had never existed, and hence that the so-called "ladder tapes" were not made from any of the materials or goods (tapes) specified in the paragraph.

Now, we think it is clear that the quoted part of paragraph 358 requires that an article to be made in whole or in part of braids thereunder must be made in whole or in part of something which has already attained a status or condition entitling it to be regarded as a braid in and of itself. But neither the covering to the article before us nor any other part of it has ever attained that condition or status; neither has it attained the status or condition in which it could be used, nor is it designed to be used, for any of the purposes to which braids are commonly devoted, namely, for binding, for trimming, or for ornamentation.

We think the record here, considered with the official exhibit, manifestly requires the conclusion that the merchandise is not an article made in whole or in part of a braid within the meaning of the paragraph. It is therefore unnecessary to consider any question argued, because, for the reasons above stated, we are of opinion that the importation was properly classifiable under paragraph 167.

The judgment of the Board of General Appraisers is *affirmed*.

(T. D. 36257.)

Star anise seed.

UNITED STATES *v.* MCKESSON & ROBBINS (No. 1645).

1. STAR ANISE SEED, HOW CLASSIFIABLE.

The crude seed of the star anise, a plant totally different from the anise, is not dutiable as "anise seed"; or, its oil being obtained by distillation and not expression, as "other oil seeds," under paragraph 212, tariff act of 1913; but admissible free as "drugs, such as * * * seeds (aromatic, not garden seeds), * * * which are natural and uncompounded drugs and not edible * * * and are in a crude state," under paragraph 477.

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2. N. S. P. F. CLAUSE IN EACH OF TWO COMPETING PARAGRAPHS, EFFECT OF.

The presence of the n. s. p. f. clause in each of two competing paragraphs leaves their relative applicability the same as if these words had not been employed.

United States Court of Customs Appeals, March 9, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7791 (T. D. 35797).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Robert Hardison*, special attorney, of counsel), for the United States.

Hatch & Chute (*Edward S. Hatch* and *Walter F. Welch* of counsel) for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The importation involved here is star anise seed, also indifferently written "star aniseed." It is in the form of a thin, dried fruit, about an inch in diameter, is in the shape of a star, in each point of which is to be found one seed. It was assessed for duty under paragraph 212 of the act of 1913 as anise seed. This term is also properly written "aniseed." The assessment was protested upon the ground that it was entitled to free entry under paragraph 477. Upon hearing the Board of General Appraisers sustained the protest.

We quote here the material part of paragraphs 212 and 477:

212. Seeds: Castor beans or seeds; * * * flaxseed or linseed and other oil seeds not specially provided for in this section, * * *; anise seed, * * *; seeds of all kinds not specially provided for in this section, * * *.

477. Drugs, such as barks, beans, berries, buds, bulbs, * * * fruits, flowers, * * * grains, * * * herbs, * * * vegetables, seeds (aromatic, not garden seeds), * * * weeds; any of the foregoing which are natural and uncompounded drugs and not edible and not specially provided for in this section, and are in a crude state, not advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture; * * *.

Claim was also made by the importers before the board under paragraph 27, but it is not urged here. There is no question of commercial designation in the case.

The Government, appealing, claims that the commodity is more specifically provided for either by the term "anise seed" or by the term "other oil seeds" in paragraph 212 and that it is not a drug for the purposes of classification under paragraph 477.

The only testimony before the board was from a witness who testified on behalf of the importers, who are wholesale druggists and manufacturing chemists. He testified that the merchandise was a crude product, aromatic, not edible, used mainly for the distillation of the oil contained therein; that his firm sold it mainly to distillers and to people to make up veterinary remedies. He produced a sample of

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anise seed which he said was used for culinary purposes, flavoring, and to some slight extent for medicinal purposes; that his firm handled it and sold the same to druggists, bakers, and other dealers; that the odor and flavor of the two were very similar; that it was not ordinarily commercially profitable to distill anise seed because it yielded too small an amount of oil; that the oil from both seeds was used for flavoring purposes; that when used for flavoring it was generally the essence and not the oil that was so employed; that practically all the anise seed oil of commerce was made from the star anise seed. When asked by the general appraiser, "Are they both used by druggists in medicine?" he answered, "Not for medicine; they are not used by druggists at all, only used by manufacturers. It is only this real seed that the druggists use." He also said that star anise seed came from a tree growing in China called the *Illicium anisatum;* that the anise seed came from a very small plant belonging to the *Umbelliferæ* or *Pimpinella* family; that the two plants belonged to entirely different families; and that a delivery of star anise seed would not in trade be regarded as a good delivery for anise seed.

The board found upon the evidence in connection with what is stated in the National Standard Dispensatory that the two seeds had been recognized at the time of the passage of the act under different names and were distinguishable from each other in shape, form, growth, name, and quite largely in use, and that the term "anise seed" in paragraph 212 was not intended to cover star anise seed, which it found to be an aromatic seed, not edible, and not a garden seed.

The merchandise is in its crude form. Counsel treat the dried fruit and seed as seed only, and we have therefore, for the purposes of this case, so regarded them.

It may be that the evidence of record leaves something to be desired upon the question of whether this star anise seed is or is not a drug within the contemplation of paragraph 477, but it is clear that it is not edible and that it is a seed (aromatic and not a garden seed). Upon the record we would hesitate to reverse the finding of the board that the merchandise was classifiable under paragraph 477 in view of the fact that standard authorities seem to support the proposition that it is a drug as that word is used in the paragraph.

The fact that anise seed and star anise seed come from different families, as testified by the witness, is well established by the authorities. The anise plant is an annual, easily grown from seeds in any warm and mellow soil, reaching a height of about 2 feet and yielding small, oblong, curved seeds ribbed on the convex side. The star anise is a small tree or shrub having thick, short-petioled, entire evergreen leaves, some species of which are found in this country. The trees or shrubs reach a height of 6 to 10 feet, and the seeds are

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about the size of and somewhat resemble the apple seed, although perhaps a little wider in proportion to their length. These seeds or products derived therefrom are said to be carminative and stomachic, and are also used to aromatize liquors and cordials. See Bailey's "Cyclopedia of American Horticulture" (vol. 1, pp. 67, 68, and vol. 2, p. 799); also Century Dictionary; also the United States Dispensatory (19th edition, p. 145). That both the anise and star anise seeds are considered as drugs in the sense that they are used to impart therapeutic properties to medicines is indicated not only by some of the authorities already cited but also by the Pharmacopœia of the United States (8th Decennial Revision, pp. 46, 52, 307, and 417), where some methods of their preparation are stated and the dosages given.

The fact that each of the quoted paragraphs contains the words "not specially provided for" leaves their relative applicability the same as if these words had not been employed. In view of the fact that these seeds are the product of such different plant life, that the seeds themselves possess such unlike characteristics in their physical appearance and are so differently regarded, as shown by the testimony and by the authorities referred to, we think the board was right in saying that Congress did not intend by the term "anise seed" in paragraph 212 to refer to star anise seed. We are not impressed with the argument that the expression "other oil seeds" in the first part of paragraph 212 was intended to cover those involved here. The castor beans or seeds and the flaxseed or linseed therein provided for are apparently those from which oil is expressed but not distilled, and would hardly seem to cover seeds the oil from which was obtained by the processes of distillation, while the provision in paragraph 477 for seeds (aromatic, not garden seeds) is closely descriptive of these star anise seeds, and more explicitly describes them than does the mentioned term "other oil seeds," or the expression "seeds of all kinds not specially provided for," used in the last part of paragraph 212.

Further than this, we think "drugs" in the sense that word is used in paragraph 477 includes, when the same are in a crude condition, vegetable products used as medicines or ingredients thereof or of chemical compositions used in the arts. Manifestly the substances therein referred to must, in many if not all cases, receive treatment before they can be applied to such uses, among which may be, if necessary, the process of distillation to obtain the medicinal principle; hence we disagree with the contention of the Government that these star anise seeds are not natural and uncompounded drugs within the paragraph.

The judgment of the Board of General Appraisers is *affirmed*.

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(T. D. 36258.)

Star anise seed.

UNITED STATES *v.* TAPPENBECK (No. 1646).

1. OBJECTION TO PROTEST, WHEN TO BE MADE.
When originating in this court, an objection to the sufficiency of a protest comes too late.

2. SUFFICIENCY OF PROTEST--REFERENCE BY NUMBER TO WRONG PARAGRAPH.
A protest which shows what claim is made and has not misled the collector is not rendered insufficient by a numerical reference to a paragraph obviously not intended.

3. STAR ANISE SEED, HOW CLASSIFIED.
Crude star anise seed, following United States *v.* McKesson & Robbins (7 Ct. Cust. Appls., —; T. D. 36257), decided concurrently herewith, is not dutiable as "anise seed," under paragraph 212, tariff act of 1913, but admissible free under paragraph 477.

United States Court of Customs Appeals, March 9, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7791 (T. D. 35797).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Robert Hardison*, special attorney, of counsel), for the United States.

Submittted on record by appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise in this case is identical with that involved in United States *v.* McKesson & Robbins (7 Ct. Cust. Appls., —; T. D. 36257), in which opinion is handed down concurrently herewith, the two cases having been heard together in this court. The importer presents neither brief nor oral argument here.

While the testimony of record varies a little from that in the companion case it is sufficient to support the same conclusion that the board reached in that case, and its opinion in each case is the same.

For the reasons stated in our decision in the other case the judgment below must be affirmed here unless the contention of the Government that the protest is insufficient is upheld.

The assessment of the merchandise here was as anise seed not specially provided for under paragraph 212 of the act of 1913. The protest claimed error in that, as it states, the merchandise "is used exclusively in the preparation of drugs and medicines * * * and should be admitted free of duty under paragraph 27 of the tariff act of October, 1913."

We have examined the record with scrupulous care and find therein no suggestion that before the board the Government claimed that the

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protest was insufficient and no reference to or consideration of such a question is found in the board's opinion. For this reason we would be reluctant to consider such a question raised here for the first time. Further than this, it is obvious that no claim for free entry can be made under paragraph 27, which is the complement of paragraph 477 of the act of 1913. The chief differences between the two are that in the first a duty of 10 per cent ad valorem is assessed upon the same merchandise named in the second, if it be advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture. The absence of this advancement is the prerequisite of free entry under paragraph 477. The protest, as above quoted, clearly calls the attention of the collector to the importer's claim that the merchandise is used in the preparation of drugs and medicines and entitled to free entry. This ought to have (and there is no suggestion upon the record that it did not) called the collector's attention to the real claim of the importer, which was for free entry as a crude drug, and must, therefore, refer the claim, so far as we are advised, to paragraph 477.

In this view it would seem, if we felt compelled to rest our decision upon this issue, that the reference to paragraph 27 was an obvious mistake and that the protest, as a whole, shows the claim in the mind of the importer at the time he made his protest and did not mislead the collector in that regard.

The judgment of the Board of General Appraisers is *affirmed*.

(T. D. 36259.)

Necklaces of beads—Jewelry.

AMERICAN BEAD CO. *v.* UNITED STATES (No. 1601.)

1. CONSTRUCTION—PARAGRAPH 356, TARIFF ACT OF 1913.

The words "composed of metal," in the fourth clause of paragraph 356, tariff act of 1913, do not modify "jewelry" in the first.—Mamluck & Co. *et al.* *v.* United States (6 Ct. Cust. Appls., —; T. D. 36198).

2. COMMERCIAL DESIGNATION—MEANING OF WORDS—PRESUMPTION.

Commercial designation is a matter of fact, not within the judicial knowledge, and the collector's finding is presumptively correct. The interpretation of words of common speech, however, seems to be a matter of law and within the judicial knowledge.

3. LEGISLATIVE HISTORY—JEWELRY—BEADS AND ARTICLES MADE OF BEADS.

The language of successive tariff acts shows that Congress has regarded beads and articles made of beads as separate tariff entities from jewelry.

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4. ARTICLES OF PERSONAL ADORNMENT ONLY—JEWELRY.

Jewelry may be useful as well as ornamental, and all articles of personal adornment are not jewelry.

5. ADMINISTRATIVE PRACTICE AS TO BEADS AND BEADED ARTICLES.

The practice of the Treasury Department has been, until recently, to classify beads and beaded articles separately from jewelry.

6. IMITATION JET—JEWELRY.

Congress has regarded imitation jet articles as separate from jewelry.—United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

7. IMITATIONS OF PRECOIUS STONES AND PRECIOUS METALS.

Necklaces and chains in imitation of precious stones and precious metals are commonly characteristic of jewelry.

8. CONSTRUCTION—PARAGRAPH 333, TARIFF ACT OF 1913.

Paragraph 333, tariff act of 1913, is exhaustive as to its subject matter—beads and spangles and articles made wholly or in chief value of them. It can be invaded only by some other clearly and more specifically expressed intention of Congress.

9. JEWELRY.

Jewelry is commonly composed of the precious metals or imitations thereof, or of precious or semiprecious stones, pearls, or imitations thereof, or cameos, coral, or amber, including artificial, synthetic, or reconstructed pearls, rubies, or other precious stones, strung or set

10. COMMERCIAL DESIGNATION—COMMON UNDERSTANDING.

The caprice of fashion or the advantages of trade may vary commercial designations, while common acceptance may remain the same.

11. AMBER—JEWELRY.

Inasmuch as Congress, in paragraph 357, tariff act of 1913, has not classed amber as a precious or semiprecious stone or material for use in the manufacture of jewelry, and in paragraph 356 has expressly avoided its enumeration among the imitations of settings rated at 60 per cent, the purpose seems obvious not to have so rated for duty imitations of amber.

12. BEADED NECKLACES WITHOUT REAL OR IMITATION PRECIOUS METALS OR REAL OR IMITATION PRECIOUS OR SEMIPRECIOUS STONES, HOW DUTIABLE.

Necklaces, with or without base metal clasps, in chief value of beads, the beads being made of wood, gelatin, or paste, and china or colored glass, some in imitation of jet and amber, are dutiable as articles in chief value of beads under paragraph 333, tariff act of 1913, and not as jewelry under paragraph 356.

United States Court of Customs Appeals, March 9, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7754 (T. D. 35591)

[Reversed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Before SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal concerns beaded chains or necklaces, some with and others without metal clasps. When present the clasps are of base metal, large, crude, colored and of the kind customarily used for carrying fans, bags, or similar articles. The beads are of various materials other than metal. Some are of wood, others gelatin or

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paste, china or colored glass. They do not, save one sample in an insignificant degree, imitate any of the precious or semiprecious stones. Including and comprising the great bulk are necklaces in imitation of jet. They are all intended to be worn on or about the person as ornaments. To some are attached pendants or tassels They are all wholly or in chief value of beads, and may be properly termed "beaded articles." Duty was assessed thereon as articles commonly known as jewelry under paragraph 356 of the tariff act of 1913. On protest the Board of General Appraisers affirmed this assessment.

The importers appeal from this decision, asserting as their chief claim that the articles are properly dutiable as "articles composed in chief value of beads" under paragraph 333 of the act.

The several instructive and pertinent paragraphs in order are as follows:

333. Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, thirty-five per centum ad valorem; curtains, and other articles not embroidered nor appliquéd and not spcially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, fifty per centum ad valorem.

356. Jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces, sixty per centum ad valorem; rope, curb, cable, and fancy patterns of chain not exceeding one half inch in diameter, width, or thickness, valued above 30 cents per yard; and articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, cardcases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones or imitation pearls, sixty per centum ad valorem. Stampings, galleries, mesh and other materials of metal, whether or not set with glass or paste, finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles in this paragraph, fifty per centum ad valorem.

357. Diamonds and other precious stones, rough or uncut, and not advanced in condition or value from their natural state by cleaving, splitting, cutting, or other process, whether in their natural form or broken, and bort; any of the foregoing not set, and diamond dust, ten per centum ad valorem; pearls and parts thereof, drilled or undrilled, but not set or strung; diamonds, coral, rubies, cameos, and other precious stones and semiprecious stones, cut but not set, and suitable for use in the manufacture of jewelry, twenty per centum ad valorem; imitation precious stones, including pearls and parts thereof, for use in the manufacture of jewelry, doublets, artificial, or so-called synthetic or reconstructed pearls and parts thereof, rubies, or other precious stones, twenty per centum ad valorem.

In this court the appellants contend—

(1) That these articles are excluded from paragraph 356 in that the phrase therein "all the foregoing * * * composed of metal"

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modifies all the preceding language of the paragraph; wherefore these articles being admittedly not "composed of metal" are excluded therefrom. The court having decided that question adversely to the appellants, it is not in this case. Mamluck & Co. *et al.* *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198).

The appellants further claim, however, (2) that beaded necklaces, such as these, are not commonly known as jewelry; and, (3) that in this act and for many years past Congress in tariff legislation has treated beads and beaded articles as separate and distinct tariff subjects from "jewelry." Wherefore it is claimed that they are not deemed by Congress and should not be held to be "jewelry" within the act. Appellants also assert that that has been the course of administration and decision.

On the other hand, the Government assumes (1) that such articles were, by the collector and the board, found to be commonly known as jewelry, which finding appellants did not impeach by testimony; and, (2) that no such uniform course of decision has been established; and, (3) that common knowledge and understanding classes these articles as jewelry.

The rule of decision that appellate courts will not within certain limitations disturb the findings of fact by the lower tribunal is too familiar to warrant argument or citation. The determination of the common meaning or scope of words of the English language, however, is not always regarded or expressed as a finding of fact, but a matter of judicial knowledge "*and a matter of law.*" The rule was tersely stated by Mr. Chief Justice Fuller in considering a provision of the tariff act of 1883, in Sonn *v.* Magono (159 U. S., 417–421), as follows:

> The words "seeds" and "vegetables" are words of common speech, and there is is no room here for the contention that they had acquired a special signification by usage or had a scientific, different from the popular, meaning. Whether the articles were properly classified as vegetables was a matter for the court to decide. The interpretation of words of common speech is withing the judicial knowledge and matter of law. Marvel *v.* Merritt (116 U. S., 11); Nix *v.* Hedden (149 U. S., 304); Cadwalader *v.* Zeh (151 U. S., 171); Saltonstall *v.* Wiebusch (156 U. S., 601).

Mr. Justice Gray amplified the rule in Nix *v.* Hedden (149 U. S., 304–307), stating:

> There being no evidence that the words "fruit" and "vegetables" have acquired any special meaning in trade or commerce, they must receive their ordinary meaning. Of that meaning the court is bound to take judicial notice, as it does in regard to all words in our own tongue; and upon such a question dictionaries are admitted, not as evidence, but only as aids to the memory and understanding of the court. Brown *v.* Piper (91 U. S., 37, 42); Jones *v.* United States (137 U. S., 202, 216); Nelson *v.* Cushing (2 Cush., 519, 532, 533); Page *v.* Fawcet (1 Leon., 242); Taylor on Evidence (8th ed., secs. 16, 21).

Of course, the trial court may take or consider evidence in aid of this ascertainment as well as examine dictionary definitions. Such

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have been held admissible by the Supreme Court for that purpose, but only as aids to the court and not as establishing or controverting an issuable fact. Robertson *v.* Salomon (130 U. S., 412–415). Commercial designation, of course, is such an issuable fact and can be established or found only upon evidence. Robertson *v.* Salomon, *supra;* Arthur *v.* Lahey (96 U. S., 112–118); Barber *v.* Schell (107 U. S., 617–623); Worthington *v.* Abbott (124 U. S., 434–436); Arthur's Executors *v.* Butterfield (125 U. S., 70–75). In United States *v.* Goldberg's Sons *et als.* (3 Ct. Cust. Appls., 282; T. D. 32573), this court reviewed these cases and adopted and applied that doctrine with reference to the provision "commonly * * * known as jewelry."

Whether, however, the determination of the common understanding or scope of a word shall be treated and expressed as a question of law or as a finding of fact, which former seems to have been the course in many cases, notably, among many so holding, United States *v.* Schiff & Co. (Circuit Court of Appeals, Second Circuit, 139 Fed., 549); Wolff *v.* United States (2 Ct. Cust. Appls., 11; T. D. 31572); United States International Forwarding Co. (6 Ct. Cust. Appls., 25; T. D. 35272), in the last analysis the result is the same, for in either case the court of final resort must approach the issue as one of original determination.

In this case no testimony was introduced on this point before the board save the report of the local appraiser that the articles were "*commonly* known as jewelry." In reaching a conclusion the board evidently did not rely upon this *opinion of the appraiser upon a question of law not within his legal functions*, but, aided by lexicographic authority, exercised judicial knowledge. The opinion states:

In the case at bar there is much more than the presumption arising from the action of the Government officer. There are the facts that the merchandise is necklaces and that it is an article of personal adornment worn around the neck. In view of these facts and the fact that the classifying officer has classified it as jewelry commonly or commercially so known, to approve the contention of the protestant we not only must set aside this presumption but we must set aside the conclusion arising from the facts. This, of course, we can not do.

* * * * * * *

Applying that rule to the facts in the case at bar, it is uncontradicted that the merchandise is necklaces *worn as a matter of adornment.*

If we were to apply our judgment, without reading the evidence in the case, as to the ordinary meaning of the term "jewelry" it would be that these articles were properly classified.

* * * * * * *

The protestant further insists in his brief that under the cases of American Bead Co. *v.* United States (3 Ct. Cust. Appls., 509; T. D. 33166) and United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), a portion of this merchandise being composed of beads in imitation of jet, could not be jewelry, and that the courts have held that imitation jet articles are not jewelry. We need not disagree with either of the authorities, but rely upon the established fact that this merchandise, whether

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of jet, of wood, or of metal, is in fact necklaces to be worn about the person for purposes of adornment, and thereby becomes jewelry. It could not be classified otherwise, even if the record were more silent than it is, and the fact was to be established merely by an examination of the exhibits without any testimony as to their use.

The Standard Dictionary, Twentieth Century Edition, among the definitions of "jewelry," has the following:

The word "jewelry," in its generally accepted and modern sense, is understood to mean ornaments worn for personal adornment only.

These necklaces are "ornaments worn for personal adornment only." We, therefore, can not come to any other conclusion than that the merchandise is jewelry, and within the first clause of paragraph 356.

There is not a scintilla of evidence in the record to support the alternative finding or assumption of fact by the board that the articles are "commercially known" as jewelry. Its conclusion, therefore, that they are commonly so known presents here an issue of law.

The decisive principle obviously adopted by the board is that *all* "ornaments worn for personal adornment only" are jewelry. This court in United States *v.* International Forwarding Co., *supra*, considered the contention based on the above lexicographic authority, which is exceptional among dictionaries, that jewelry can be used for "personal adornment *only*" and not utility and declined to so hold. See also United States *v.* American Express Co. (6 Ct. Cust. Appls., 97; T. D. 35341); United States *v.* Altman & Co. *et al.* (6 Ct. Cust. Appls., 131; T. D. 35390). Equally the court must decline to hold that *all* articles of personal adornment are jewelry; or, more pertinently, that all necklaces being articles of personal adornment are jewelry.

Refutation is had by advertence to the Standard Dictionary, Twentieth Century Edition:

Necklace.—1. An ornament worn round the neck, of beads, *shells*, *seeds*, precious stones, or precious metal.

Certainly no one will assert that a necklace of shells or seeds is jewelry.

The view expressed by the United States District Court for Hawaii in United States *v.* Hawaii & South Seas Curio Co. (T. D. 26778) seems to us to more nearly accord with the common understanding in stating:

The counsel for the petitioner refers considerably to the word "necklace" and to the incontestable conclusion that these strung shells are necklaces. From this he appears to draw a very strong implication that, being necklaces, they must be jewelry. I admit that shells so prepared and used for wearing around the neck, as these undoubtedly are, are necklaces, but "necklaces" also include strings of coins, beads, or flowers, according to the Century Dictionary, which describes a necklace as a flexible ornament worn around the neck, which description would also include the strings of seeds of various kinds so extensively prepared in these islands and often worn about the neck. I do not consider that a necklace of flowers or a necklace of seeds unmounted in metal, but merely strung, could be reasonably classified as jewelry.

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Has the legislative course of Congress assigned "beads" and "articles made from beads" a different and distinct tariff classification from "jewelry"? Apparently from a period long antedating the requirements of the rule of legislative adoption such has been the course. Of earlier tariff acts the Supreme Court, in United States v. Morrison (179 U. S., 456–459), in considering the dutiable classification of certain beads, strung, said:

As early as 1858 the Treasury Department decided that genuine pearls, when imported strung on a thread to be used as beads for necklaces without further manufacture, were dutiable as beads. And later jet and coral necklaces were classed as beads and bead ornaments.

The court in that case reviews the various contemporaneous provisions for beads and bead ornaments, precious stones, imitations thereof, and jewelry down to the tariff act of 1890, and states:

From this review it is evident that in prior tariff acts (to that of 1890) beads were classified separately from imitations of precious stones and were regarded as distinct from them * * *.

Notwithstanding the provision in that act for "jewelry" (par. 452) the Supreme Court held these beads *strung* dutiable as manufactures of glass, there being no provision in the act for articles composed of beads. While the precise issue as to jewelry was not made in the case, absence of its suggestion affords much light upon the customs practice of that day.

That Congress, excepting the act of 1890, providing and construed as stated, regarded bead ornaments and jewelry, both as commonly and commercially so known, as separate tariff entities is clearly shown by the pertinent contrasted provisions of the several acts.

Revised Statutes, 1873–1874:

All beads and bead ornaments, except amber, fifty per centum ad valorem.

Precious stones and jewelry.—Diamonds, * * * and other precious stones, when not set: * * * when set in gold, silver, or other metal, or in imitations thereof, and *all other jewelry*, twenty-five per centum ad valorem; * * *.

Act of 1883:

Beads, and bead ornaments of all kinds, except amber, fifty per centum ad valorem.

Jewelry of all kinds, twenty-five per centum ad valorem.

Act of 1890:

445. Glass beads, loose, unthreaded or unstrung, ten per centum ad valorem.

452. Jewelry: All articles, not elsewhere specially provided for in this act, composed of precious metals or imitations thereof, whether set with coral, jet, or pearls, or with diamonds, rubies, cameos, or other precious stones, *or imitations thereof, or otherwise*, and which shall be known commercially as "jewelry," and cameos in frames, fifty per centum ad valorem.

Act of 1894:

354. * * * Manufactures known commercially as bead, beaded or jet trimmings or ornaments, thirty-five per centum ad valorem.

336. Jewelry: All articles not specially provided for in this act, commercially known as "jewelry," and cameos in frames, thirty-five per centum ad valorem.

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Act of 1897:

408. Beads of all kinds, not threaded or strung, thirty-five per centum ad valorem; fabrics, nets or nettings, laces, embroideries, galloons, wearing apparel, ornaments, trimmings and other articles not specially provided for in this act, composed wholly or in part of beads or spangles made of glass or paste, gelatin, metal, or other material, but not composed in part of wool, sixty per centum ad valorem.

434. Articles *commonly* known as jewelry, and parts thereof, finished or unfinished, not specially provided for in this act, including precious stones set, pearls set or strung, and cameos in frames, sixty per centum ad valorem.

Act of 1909:

421. Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, thirty-five per centum ad valorem; fabrics, nets or nettings, laces, embroideries, galloons, wearing apparel, ornaments, trimmings, curtains, fringes, and other articles not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, but not in part of wool, sixty per centum ad valorem * * *.

448. * * * All articles commonly or commercially known as jewelry or parts thereof, finished or unfinished, including chain, mesh, and mesh bags and purses composed of gold or platinum, whether set or not set with diamonds, pearls, cameos, coral, or other precious or semiprecious stones, or imitations thereof, sixty per centum ad valorem.

The noticeable fact that the acts of 1894, 1897, and 1909 repeatedly and uniformly prescribed by separate paragraphs the same rate of duty upon both these tariff subjects is certainly persuasive that they were regarded and classified by Congress as different in a tariff sense. The legal rule against tautological legislation leaves no other conclusion open to the court.

Briefs of counsel abound in citations claiming contrary decisions as to the classification of beaded chains and necklaces under these statutes. We have examined all these cases with care. While there may be some conflict, we think it will be found on close examination, with reference to the particular record and statutes in each case, that this conflict is more apparent than real. The earlier board cases seem controlled more by the character of the necklace as of metal and imitation precious stones or semiprecious stones in *imitation of jewelry*, holding such commercially known as jewelry or imitation jewelry. The similarity of the rates of duty in the competing paragraphs of the acts of 1894, 1897, and 1909 rendered decision as to whether the articles were one or the other unnecessary, even though Congress had with precise care marked and preserved the statutory difference. Nevertheless, the important thing now is, Did *Congress* by letter of the statute make the distinction? We are impressed that the great preponderance of authority observed it. Certainly administrative officers did, for the unimpeached testimony of the official examiner who served at New York for 14 years, under the acts of 1897 and 1909, was that he thereunder continuously returned goods represented by these samples as "beaded articles." (Record, p. 11.) Indeed, the order

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of the Treasury Department (T. D. 34511) recites that practice as follows:

As it appears from the appraiser's report of April 29 last that it has been the practice at your port to classify beaded bracelets and beaded necklaces under paragraph 333 of the tariff act at the rate of 50 per cent ad valorem and the duty under paragraph 356 would be a higher rate, you are hereby directed to continue to assess duty upon the articles in question at the rate of 50 per cent ad valorem imported or withdrawn from warehouse within 30 days from the date hereof, after which date you are directed to assess duty on such articles at the rate of 60 per cent ad valorem as articles commonly and commercially known as jewelry under paragraph 356 of the tariff act.

The order directing a change of that practice so recognizes, by directing 30 days' notice to importers before the change shall be enforced, thereby very justly permitting "ordered" importations time for entry before the *new ruling* becomes effective.

This court at intervals has expressly or impliedly expressed the same view. Many, if not most, of the articles here in question are composed of imitation jet. This court, in United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), after reviewing the statutes and decisions, concluded:

We think that it may be unqualifiedly said that from 1846 to the time of the enactment of the tariff law of 1909 all legislation upon the subject uniformly observed the distinction for tariff purposes between articles in imitation of jet and articles of jewelry, or commonly known as jewelry. * * *

Counsel for the Government seeks to avoid this precedent by the claim that whereas the act of 1909, paragraph 448, by express language excluded articles of jewelry if set with imitation jet, this exclusion is omitted from the corresponding paragraph (356) of the act of 1913. We do not think the omission of an excluding, any more than of an including, term from a provision of a tariff act necessarily operates to include therein previously thereby excluded articles. Seeberger *v.* Cahn (137 U. S., 95); Arthur *v.* Stephani (96 U. S., 125). It seems more natural to assume that Congress, finding that imitation jet articles had uniformly and finally been declared not within the term jewelry, omitted this redundancy of expression. The Beierle case was reaffirmed and followed by this court in United States *v.* Sheldon & Co. (2 Ct. Cust. Appls., 283; T. D. 32034).

In United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509; T.D.33166) this court discussed and differentiated beads "adapted for use as strings of beads" and in imitation of precious stones adapted for use in jewelry.

In United States *v.* Flory & Co. (4 Ct. Cust. Appls., 87; T. D. 33367) the Government expressly abandoned that part of its appeal affecting jet articles which were claimed jewelry.

In United States *v.* Kraemer & Co. *et al.* (5 Ct. Cust. Appls., 294; T. D. 34474) a part of the goods in question were "necklaces constructed of glass beads and cotton strings with a brass clasp," which

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had been assessed by the collector under paragraph 421 of the act of 1909 as "articles composed wholly or in chief value of beads." They were by the board held dutiable as toys. This court reversed the decision of the board, holding them properly classified by the collector. While the jewelry issue was not made, the decision may not be authority, but the fact that the assessment and claim were not made is instructive.

The case of Kraemer & Co. *v.* United States (5 Ct. Cust. Appls., 470; T. D. 35003) concerned certain necklace clasps. Apparently they were of wrought metal. The court distinctly rested the decision holding them parts of jewelry upon the ground that they were sold to jewelers and that "they are apparently as susceptible of use on necklaces of metal as of beads," thereby reserving out of the case decision, if not assuming, that bead necklaces were jewelry.

The court in United States *v.* American Express Co. (6 Ct. Cust. Appls., 97; T. D. 35341) sharply drew the distinction between chains ornamented with imitation precious stones and brass or gold colored chains on the one hand and plain black ornamented metal chains, holding the former "commonly" known as jewelry and the latter so only because proven commercially so known.

From the foregoing it is made clear that as to imitation jet articles this court has already declared, and as to other beaded articles, nonmetallic and not in imitation of precious stones, assumed, that they had been allotted by Congress a different tariff status from jewelry commonly or commercially so known.

Frequently, also, this court has held or assumed that necklaces and chains in imitation of precious stones and the precious metals were classifiable as jewelry. United States *v.* Cohn & Rosenberger (3 Ct. Cust. Appls., 273; T. D. 32571); United States *v.* Goldberg's Sons *et als.* (3 Ct. Cust. Appls., 282; T. D. 32573); Guthman, Solomons & Co. *v.* United States (3 Ct. Cust. Appls., 286; T. D. 32574); United States *v.* Flory & Co. (4 Ct. Cust. Appls., 87; T. D. 33367); Cohn & Rosenberger *et als. v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536); Lorsch & Co. *et al. v.* United States (5 Ct. Cust. Appls., 93; T. D. 34132); United States *v.* International Forwarding Co. (6 Ct. Cust. Appls., 25; T. D. 35272). Likewise it has been held metal beads strung made of base and not precious metals are not jewelry but manufactures of metal. Frankenberg Co. *v.* United States (206 U. S., 224).

Equally persuasive is the present legislative concept. We have heretofore set out in full the congressional code in force affecting beads and beaded articles and jewels and jewelry, paragraphs 333, 356, and 357. While the language of the "jewelry" paragraph, 356 of the act of 1913, is conspicuously narrowed in material particulars from the scope of its predecessor paragraph, 448 of the act of 1909,

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the provisions of the here competing paragraph, 333 of the act of 1913, providing for beads and beaded articles is enlarged beyond its predecessor paragraph, 421 of the act of 1909. This patent fact leads us to the same and fortifies the conclusion reached with reference to the relative specificity of paragraphs 333 and 356 by this court in comparing paragraphs 333 and 358, this act, in Lowenthal & Co. *et al.* *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464). We therein said:

> Bearing in mind, therefore, the amended act, and reading together all the amending provisions, we think the congressional purpose clear to provide by paragraph 333 for all articles in chief value of beads, * * *.

The court views that it was intended as an exhaustive provision as to its subject matter (1) beads and spangles, (2) articles composed wholly and in chief value of beads and spangles, only to be invaded by some other clearly and more specifically expressed intention of Congress. We do not herein find any such intention but the contrary expressed.

(1) Because Congress has expressly indicated in the jewelry paragraph, 356, that a class of articles "designed to be worn on apparel or carried on or about or attached to the person" should bear the jewelry rate, 60 per cent, and has therein concededly declared that such must be "composed of metal," which these admittedly are not, it is persuasive that Congress did not intend to include in the jewelry paragraph any other such articles unless they were commonly or commercially known as jewelry.

(2) Because Congress has consistently and for many years provided separately, sometimes at the same and sometimes at different rates of duty, for beads and articles composed of beads and jewelry commonly or commercially so known, thereby clearly declaring them different subjects of tariff classification and duty, and has continued that policy with emphasis in this act, the court does not feel justified in declaring such distinction not to exist and that Congress intended to include either in the other.

(3) There are concededly beaded necklaces commonly regarded as jewelry (imitation or real), such as pearl or gold-beaded necklaces, or imitations thereof [United States *v.* Goldberg's Sons *et al.* (3 Ct. Cust. Appls., 282; T. D. 32573); United States *v.* Kraemer & Co. *et al.* (5 Ct. Cust. Appls., 294; T. D. 34474)] and silver necklaces set with pearls [United States *v.* Cohn & Rosenberger (3 Ct. Cust. Appls., 273; T. D. 32571)], or white metal set with precious stones [United States *v.* International Forwarding Co. (6 Ct. Cust. Appls., 25; T. D. 35272)], which are commonly regarded as jewelry. There are also beaded necklaces equally regarded as not commonly known as jewelry, such as shell, seed, and wooden beaded necklaces, and such necklaces as are made of bear's claws, or elk's teeth, and the like,

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none of which is the product or imitation of the work and skill of the jeweler nor found in jewelry stores, but is the product of various manufacturers and more commonly found in general merchandise stores. They are ornaments for personal adornment only, but are not commonly known as jewelry.

(4) Without attempting a fixed definition of jewelry or to declare a hard and fast line of distinction between these competing paragraphs the recitals therein by Congress, taken in connection with well-known general incidents of jewelry, real and imitation, are notably significant. Jewelry as therein indicated and in the common conception is composed of the precious metals or imitations thereof; or, of precious or semiprecious stones, pearls, or imitations thereof, or cameos, coral, or amber, including artificial, synthetic, or reconstructed pearls, rubies, or other precious stones, strung or set.

Common conception of what constitutes a named article of necessity resides in its physical attributes as presented to the vision. While the caprice of fashion or the advantages of trade may in trade vary this understanding, it is only commercially and not commonly so, for the common acceptation remains the same notwithstanding the periodical appearance of what may commonly be regarded as unusual personal adornments, denominated possibly by interested trade as jewelry. Undoubtedly, therefore, the common acceptation of jewelry readily refers the mind to articles made from the precious metals and stones and imitations thereof.

On the other hand, beaded articles may be made of any material and may or may not be worn upon or about or attached to the person. To illustrate: Necklaces made of the precious metals or imitations thereof have been held by this court as jewelry, commonly so known. Cases cited, *supra*.

Likewise, necklaces in imitation of the precious stones. Cases cited, *supra*.

Now, jet is not a precious or semiprecious stone, but a variety of mineral coal. Accordingly, we have held imitation jet articles not jewelry commonly so known. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506). So, also, held the Supreme Court of metal (nonprecious) beads, strung. Frankenberg Co. *v.* United States (206 U. S., 224).

There are herein certain samples of beaded necklaces made in imitation of amber beads. Inasmuch, however, as Congress in paragraph 357 has not classed amber as a precious or semiprecious stone or material for use in the manufacture of jewelry, and in paragraph 356 has expressly avoided its enumeration among the imitations of settings rated at 60 per cent, the purpose seems obvious not to have so rated for duty imitations of amber.

The decision of the Board of General Appraisers is, therefore, *reversed*.

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(T. D. 36260.)

Handkerchiefs, embroidered or scalloped.

MARSHALL FIELD & CO. *v.* UNITED STATES (No. 1615).

1. HANDKERCHIEFS, EMBROIDERED OR SCALLOPED, HOW DUTIABLE—RELATIVE SPECIFICITY.

With reference to embroidered or scalloped, hemmed or unhemmed, linen or cotton handkerchiefs, paragraph 358, tariff act of 1913 ("handkerchiefs, * * * embroidered * * * or * * * scalloped, * * * of whatever yarns, threads, or filaments composed"), is more specific than paragraph 255 ("handkerchiefs * * * composed of cotton"), or paragraph 282 ("handkerchiefs composed of flax"), and classifies them for duty.

2. CONSTRUCTION—ONE PARAGRAPH CONSTRUED IN THE LIGHT OF OTHERS.

A comparative reading of all the handkerchief paragraphs shows that paragraph 358 takes from all the others all embroidered or scalloped handkerchiefs.

3. CONSTRUCTION—PARAGRAPH 358, TARIFF ACT OF 1913.

In paragraph 358 both "handkerchiefs" and "all articles or fabrics" are modified by "embroidered" and "scalloped," and an unfinished embroidered or scalloped handkerchief, even if not far enough advanced to be a handkerchief, would be dutiable thereunder.

United States Court of Customs Appeals, March 9, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7768 (T. D. 35654).

[Affirmed.]

Crim & Wemple (*William L. Wemple* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in the present case consists of certain linen and cotton handkerchiefs which were imported under the tariff act of 1913.

The collector assessed duty upon the articles at the rate of 60 per cent ad valorem as "handkerchiefs, embroidered," within the provisions of paragraph 358 of the act.

The importers protested, claiming an assessment of the cotton handkerchiefs at the rate of 25 per cent or 30 per cent ad valorem under paragraph 255, and of the linen ones at the rate of 35 per cent or 40 per cent ad valorem under paragraph 282 of the act.

The protest was submitted upon evidence to the Board of General Appraisers. The board found that the handkerchiefs represented by Nos. 1, 2, 3, 6, 7, 8, and 9 of collective Exhibit A, as well as those of collective Exhibit B, were in fact embroidered, while those represented by No. 4 of collective Exhibit A were scalloped. As to the foregoing articles the board overruled the protest, from which

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decision the importers appealed. On the other hand, the board found that the handkerchiefs represented by No. 5 of collective Exhibit A were neither embroidered nor scalloped. As to these the protest was sustained, from which ruling no appeal was taken by the Government.

The following is a copy of the relevant provisions of the tariff act of 1913, to which is added a copy of the paragraph relating to silk handkerchiefs, for illustration:

255. Handkerchiefs or mufflers composed of cotton, not specially provided for in this section, whether finished or unfinished, not hemmed, twenty-five per centum ad valorem; hemmed, or hemstitched, thirty per centum ad valorem.

282. Handkerchiefs composed of flax, hemp, or ramie, or of which these substances, or any of them, is the component material of chief value, whether in the piece or otherwise, and whether finished or unfinished, not hemmed or hemmed only, thirty-five per centum ad valorem; if hemstitched, or imitation hemstitched, or revered, or with drawn threads, but not embroidered, initialed, or in part of lace, forty per centum ad valorem.

315. Handkerchiefs or mufflers composed wholly or in chief value of silk, finished or unfinished; if cut, not hemmed or hemmed only, 40 per centum ad valorem; if hemstitched or imitation hemstitched, or revered, or having drawn threads, but not embroidered in any manner with an initial letter, monogram, or otherwise, 50 per centum ad valorem.

358. * * * Handkerchiefs, napkins, wearing apparel, and all other articles or fabrics made wholly or in part of lace or of imitation lace of any kind; embroideries, wearing apparel, handkerchiefs, and all articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or tamboured, appliquéd, or scalloped by hand or machinery, any of the foregoing, by whatever name known; * * * all of the foregoing, of whatever yarns, threads, or filaments composed, sixty per centum ad valorem.

The question presented by the present record, as already stated, is twofold: First, whether the handkerchiefs now upon appeal come within the *eo nomine* provision for handkerchiefs contained in paragraph 358, *supra;* and, second, if so, whether that provision governs the assessment of the present articles to the exclusion of the competing *eo nomine* provisions for handkerchiefs contained in paragraphs 255 and 282, *supra.* Upon these issues the board found, as a matter of fact, that the handkerchiefs in question were either embroidered or scalloped, and thus were within the terms of paragraph 358; and, as a matter of law, further found that the latter paragraph governed the assessment of the articles to the exclusion of paragraphs 255 and 282.

There was but a single witness who testified in the case; this was Mr. Nutting, who was called by the importers, and who apparently is identified with them in business. The witness testified that he was a buyer of handkerchiefs, and had for 14 years made frequent trips to Europe for the purpose of buying such articles; that he had prepared a list of the items covering the merchandise in question. This memorandum was produced and filed as part of his testimony. The

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witness also produced samples of the merchandise, and these were received as exhibits. They were marked "Collective Exhibit A" (containing nine numbers), "Collective Exhibit B," and "Collective Exhibit C." The witness stated that the handkerchiefs in question were all embroidered, except No. 5 of collective Exhibit A. In the memorandum submitted by the witness all of the handkerchiefs are said to be embroidered except No. 5, just referred to, and No. 4, which, however, is described in the memorandum as scalloped.

The last question and answer appearing in the witness's testimony are as follows:

Q. You don't dispute that they are all embroidered?—A. No, sir.

An inspection of the exhibits leads to an acceptance of the witness's statement that the handkerchiefs are all embroidered or scalloped, except No. 5, which is not now in issue. In the case of Nos. 1, 2, 3, 7, 8, and 9 of collective Exhibit A, and all of collective Exhibit B, ornamental figures, in part colored, are superimposed by needlework upon the fabric of the handkerchiefs. In the case of No. 6 of the first exhibit a permanent and ornamental initial is similarly added to the fabric. No. 5 has scalloped edges within the rule laid down in Gardner & Co. *v.* United States (2 Ct. Cust. Appls., 477; T. D. 32228). Upon this record therefore it is unnecessary for us to review the definitions and decisions relating to embroideries, since it must be accepted by the court as an undisputed and indeed conceded fact that the handkerchiefs in question in this case are either embroidered or scalloped. As we construe paragraph 358 this finding brings the articles within the provisions of that paragraph, for "handkerchiefs, and all articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or tamboured, appliquéd, or scalloped by hand or machinery, any of the foregoing by whatever name known." In our view the term "handkerchiefs" as well as the succeeding term "all articles or fabrics" is modified by all of the descriptive terms following it in the quotation just above copied. The phrase "by whatever name known" was manifestly added out of great caution, and may apply less aptly to handkerchiefs than to the other subjects which it concurrently modifies, but nevertheless the terms quoted are all parts of a single construction. The *eo nomine* enumeration of handkerchiefs was evidently placed in the paragraph to make more manifest the legislative intention that such articles when embroidered or scalloped should bear the same rate of duty as that imposed in the paragraph upon other embroideries.

It appears from the testimony and the exhibits that the handkerchiefs which are represented by collective Exhibit B are not yet finished, their edges being yet unbound and unhemmed in any manner. It nevertheless appears that they already have, in fact, ac-

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quired the name and character of handkerchiefs, and they would therefore fall within that enumeration of paragraph 358; but even if they were not far enough advanced in the process of manufacture to respond to the *eo nomine* enumeration of handkerchiefs, they would nevertheless come within the provision for "all articles or fabrics," etc., contained therein.

We therefore agree with the finding of the board that the articles in question fall within the enumerations of paragraph 358.

We come next to compare the relative degrees of applicability of paragraphs 255, 282, and 358 to the merchandise in question. The latter paragraph, according to our interpretation, provides by name for "handkerchiefs * * * embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or * * * scalloped by hand or machinery, * * * of whatever yarns, threads, or filaments composed." The comprehensive terms of this enumeration, read in the light of the context, convince us that it was the legislative purpose thereby to reach all embroidered and scalloped handkerchiefs and to subject them because of those conditions to the high rate of duty prescribed by the paragraph, to the exclusion of all paragraphs of the act which omitted specific reference to those forms of ornamentation.

Paragraph 255 provides *eo nomine* for handkerchiefs composed of cotton, not specially provided for in the act, whether finished or unfinished. Paragraph 282 provides for handkerchiefs composed of flax, hemp, or ramie, whether finished or unfinished, imposing a duty of 35 per cent ad valorem thereon if not hemmed or hemmed only, and a rate of 40 per cent ad valorem if hemstitched, or imitation hemstitched, or revered, or with drawn threads, "but not embroidered, initialed, or in part of lace." Paragraph 315 provides in similar terms for handkerchiefs composed of silk and contains a similar reservation.

It is contended by the appellants that the cotton and linen paragraphs apply more specifically than the embroidery paragraph to the present articles, even assuming that the articles fall within the enumerations of all of the paragraphs. We can not, however, agree to this proposition. All of the enumerations in question are of handkerchiefs *eo nomine*. The comparison in specificity must therefore depend upon the additional conditions or qualities which are prescribed by the respective provisions. In comparing these we find that the enumeration of "handkerchiefs composed of cotton," or "handkerchiefs composed of flax," is not as exact or specific as "handkerchiefs, * * * embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or * * * scalloped by hand or machinery, * * * of whatever yarns, threads, or filaments composed." The latter enumeration

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contains by force of its last phrase all of the terms included within the former ones, and in addition thereto contains a specific term in reference to the ornamentation of the articles by means of embroidery or other prescribed methods, thus narrowing the described class of articles as compared with the former enumerations. This comparison of the paragraphs is furthermore confirmed by the terms "but not embroidered, initialed, or in part of lace," which appear in paragraphs 282 and 315. This reservation does not of itself undertake to prescribe a rate of duty for embroidered handkerchiefs, but simply indicates that such handkerchiefs are provided for elsewhere in the act. This reference must, of course, relate to paragraph 358. It is true that no such reservation appears in paragraph 255, although a general n. s. p. f. clause appears therein. In paragraphs 282 and 315 the foregoing reservation appears in the concluding clause of the paragraphs, and upon first reading it may seem to relate only to such linen or silk handkerchiefs as are hemstitched or imitation hemstitched, or revered, or with drawn threads. A comparison of the respective paragraphs, however, convinces us that Congress intended the reservations in question to apply to the entire paragraphs in which they appear, and that the same were inserted from abundance of caution only, and not because the reservations were strictly necessary to exclude embroidered handkerchiefs from the operation of the cotton, linen, or silk paragraphs in question, for that result is fully accomplished by force of the more specific enumeration of paragraph 358. This conclusion is not at all in conflict with our decision in the case of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), wherein we held that a provision for "wearing apparel composed of cotton or of cotton in chief value, made up or manufactured in part," was more specific in relation to the goods then in question than a provision for "articles made up in part of tuckings of whatever yarns, threads, or filaments composed." The primary comparison in that case was between the enumeration of "wearing apparel" as contrasted with the enumeration of "articles made up in part of tuckings," the first of which contained a limitation as to use which was absent from the second. In the present case the primary enumeration in each provision is "handkerchiefs," and the relative degrees of specificity of the several enumerations depend upon the modifying phrase "composed of cotton" or "composed of flax," as compared with the modifying phrase "embroidered in any manner * * * of whatever yarns, threads, or filaments composed." As already stated, the latter description as compared with the former is narrowed by the provision for embroidery, and is therefore the more specific of the enumerations in question.

In accordance with the views above expressed, the decision of the board is *affirmed*.

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(T. D. 36261.)

Printing paper.

UNITED STATES *v.* MURPHY & CO. (No. 1637).

1. PLEADING—DEFENSIVE MATTER NEED NOT BE NEGATIVED.

A party pleading a statute need not negative an exception contained in a proviso or amendment in a separate substantive clause, and not in the enacting clause, for this is matter of defense to the plea.

2. PROTEST, SUFFICIENCY OF.

A protest claiming printing paper to be dutiable under paragraph 322, tariff act of 1913, need not deny that it came from a country which imposed an export duty upon it or the material used in its manufacture. To hold this would be to hold that every protest must negative paragraph E of section 4, which levies additional duty upon any dutiable article coming from a country which bestows a bounty upon its exportation.

United States Court of Customs Appeals, March 9, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38555.

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Allan R. Brown for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges

MARTIN, Judge, delivered the opinion of the court:

The merchandise in the present case consists of paper which was imported under the tariff act of 1913.

The collector assessed duty upon the importation at the rate of 25 per cent ad valorem under the provision for all papers not specially provided for in paragraph 332 of the act.

The importers protested against the assessment, claiming the merchandise to be dutiable at 12 per cent ad valorem as printing paper not specially provided for, valued above 2½ cents per pound, under paragraph 322 of the act.

The protest was submitted upon evidence to the Board of General Appraisers, who sustained the same. The Government now appeals.

The following is a copy of the two paragraphs of the tariff act of 1913 thus severally relied upon by the parties:

322. Printing paper (other than paper commercially known as handmade or machine handmade paper, japan paper, and imitation japan paper by whatever name known), unsized, sized, or glued, suitable for the printing of books and newspapers, but not for covers or bindings, not specially provided for in this section, valued above 2½ cents per pound, twelve per centum ad valorem: *Provided, however*, That if any country, dependency, province, or other subdivision of government shall impose any export duty, export license fee, or other charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise) upon printing paper,

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wood pulp, or wood for use in the manufacture of wood pulp, there shall be imposed upon printing paper, valued above 2½ cents per pound, when imported either directly or indirectly from such country, dependency, province, or other subdivision of government, an additional duty equal to the amount of the highest export duty or other export charge imposed by such country, dependency, province, or other subdivision of government, upon either printing paper, or upon an amount of wood pulp or wood for use in the manufacture of wood pulp necessary to manufacture such printing paper.

332. Papers or cardboard, cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, or other forms, and all post cards, not including American views, plain, decorated, embossed, or printed, except by lithographic process, and all papers and manufactures of paper or of which paper is the component material of chief value, not specially provided for in this section, twenty-five per centum ad valorem.

The first question which naturally engages our attention relates to the essential character of the paper itself, whether it is printing paper not specially provided for, and also whether it is valued above 2½ cents per pound. Two witnesses were examined upon these issues, and several exhibits were filed with the board. Upon the testimony the board found the paper in question to be such printing paper, and to be valued above 2½ cents per pound. A review of the record is convincing that the board's finding to this effect is clearly sustained by the evidence.

The next question which comes to our attention relates to the sufficiency of the protest as a pleading under paragraph 322, *supra*, and this question is emphasized by the Government in its brief upon this appeal.

As appears above, paragraph 322 contains a proviso that if any country shall impose an export duty or charge of any kind upon printing paper, wood pulp, or wood for use in the manufacture of wood pulp, an additional duty shall be imposed in such case upon printing paper valued above 2½ cents per pound, when imported directly or indirectly from such country, equal to the amount of the highest export duty or other export charge imposed by such country, either upon printing paper, or upon an amount of wood pulp or pulp wood necessary for the manufacture of such printing paper.

The present protest is in the following terms, viz:

We hereby protest against being compelled to pay 25 per cent duty on printing paper entered by us for consumption 5/28/14 per steamship *Texas*, claiming that the said paper should be assessed for duty at 12 per cent as printing paper valued over 2½ cents per pound under paragraph 322, act of October 3, 1913, entry No. 12655. Sig. 8/11/14.

We pay the excess exacted under compulsion to get possession of the goods, and will hold you and the Government responsible for the return of the same.

It will be observed that the foregoing protest denies the correctness of the rate of duty already assessed upon the merchandise by the collector, and claims that the same should be assessed for duty at 12

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per cent as printing paper valued over 2½ cents per pound under paragraph 322, above copied. The protest, however, contains no specific averment that the present merchandise does not come within the terms of the proviso of the paragraph. It does not name the country from which the paper in question was exported, nor does it state that the country of exportation levies no export charge of any kind upon such paper, or upon the wood pulp or pulp wood necessary for the manufacture thereof.

The Government contends that the protest is insufficient in the foregoing particular, and that the importers, when claiming an assessment of their merchandise at the rate of 12 per cent ad valorem under the body of paragraph 322, should specifically negative the application of the proviso to the merchandise by naming the country from which it was exported and stating that no export charges of any kind are imposed by that country upon the exportation of such printing paper, or upon the wood pulp or pulp wood necessary for the manufacture thereof.

The Government also contends that the importers in such case would be bound to sustain these several averments by proper evidence at the trial of the case before the board.

Upon consideration, however, we are convinced that the protest now in question is sufficient to sustain the board's decision in the present case.

The body of paragraph 322, *supra*, in general terms imposes a duty of 12 per cent ad valorem upon printing paper not specially provided for, valued above 2½ cents per pound. The proviso of the paragraph, however, carves out certain exceptions to the general provisions just referred to, and specifies that in certain particular cases a different rule of assessment would obtain. These exceptions are not made to depend upon the characteristics of the merchandise described in the paragraph, but upon circumstances wholly extrinsic thereto. The protestants in the present case, therefore, are in the position of pleaders who bring themselves by the averments of their protest within the general provisions of the paragraph, and in such case they are not required in advance to plead or prove also such special and additional facts as would negative the application of the proviso to the merchandise in question.

Cyclopædia of Law and Procedure (vol. 36, 1238):

Where the enacting clause of a statute contains an exception to the general provisions of the act, a party pleading the provisions of the statute must negative the exception, but where the exception is contained in a proviso, in a separate substantive clause, or in an amendment, the party pleading the statute need not negative the exception, and it is for the other party to set it up in avoidance of the general provisions of the statute.

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Cooley, C. J., in Lynch *v.* The People (16 Mich., 474, 476):

The rule in pleading statutes is stated by Mr. Justice Manning in Myers *v.* Carr (12 Mich., 63). In declaring on a statute, where there is an exception in the enacting clause, the pleader must negative the exception; but where there is no exception in the enacting clause, but an exception in a proviso to the enacting clause, or in a subsequent section of the act, it is matter of defense and must be shown by the defendant. See also Attorney General *v.* Oakland County Bank (Walk. Ch., 90).

The foregoing authority is cited with approval in Maxwell Land Grant Co. *v.* Dawson (151 U. S., 586, 604).

It is interesting to note that paragraph E of section 4 of the tariff act of 1913 provides that whenever any country shall bestow a bounty upon the exportation of any article therefrom, and such article is dutiable under the provisions of the act, then upon the importation of such article into this country there shall be levied thereon in addition to the duties otherwise imposed by the act an additional duty equal to the net amount of the bounty enjoyed by such article at exportation. It may therefore be said that every imported article is potentially liable to countervailing duties. If the position of the Government in the present case be correct, it would seem to follow that every protest should specifically negative the application of such duties to the merchandise in question, for if such merchandise be incorrectly classified by the collector, *non constat* but that a correct classification thereof might bring the merchandise within the provisions for a countervailing duty. It is certain, however, that such a practice has not been followed, nor indeed advocated, in the past.

The conclusion above expressed is sustained by our decision in the recent case of United States *v.* Kuyper & Co. (6 Ct. Cust. Appls., 142; T. D. 35393). The merchandise in that case was a cereal meal and was assessed with duty at the rate of 15 per cent ad valorem as a nonenumerated manufactured article. The importers claimed free entry for the merchandise as a wheat product under the body of paragraph 644 of the tariff act of 1913. That paragraph and the importers' protest under it are here copied for reference:

644. (Free list.) Wheat, wheat flour, semolina, and other wheat products, not specially provided for in this section: *Provided*, That wheat shall be subject to a duty of 10 cents per bushel, that wheat flour shall be subject to a duty of 45 cents per barrel of one hundred and ninety-six pounds, and semolina and other products of wheat, not specially provided for in this section, ten per centum ad valorem, when imported directly or indirectly from a country, dependency, or other subdivision of government which imposes a duty on wheat or wheat flour or semolina imported from the United States.

The protest was as follows:

Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties and your decision assessing duty at 15 per cent ad valorem, or other rate or rates, on vegetable albumen or similar merchandise

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covered by entries below named. The reasons for objection, under the tariff act of October 3, 1913, are as follows: Said merchandise is covered by, and is free of duty under, paragraph 392 or (as wheat products) paragraph 644.

It will be observed that the foregoing paragraph in general terms admitted wheat products free of duty, but provided, nevertheless, that such products should pay duty at the rate of 10 per cent ad valorem when imported directly or indirectly from a country which imposes a duty on wheat or wheat flour or semolina when imported from the United States. It will also be observed that the protest in the foregoing case simply claimed free entry for the importation under the body of the paragraph, without naming the country from which the merchandise was exported or stating whether the country of exportation did or did not impose a duty upon wheat or wheat products or semolina when imported from the United States, in all of which respects the protest was analogous to that now before the court. The board sustained the protest.

When the foregoing case reached this court upon appeal the Government challenged the sufficiency of the protest upon grounds substantially similar to those presented in behalf of their present contention. This court held in effect that the protest in question was sufficient as a claim for the free entry of the merchandise under the body of the paragraph above copied. It appeared, however, by the concession of the importers in the case that the wheat products in question were imported from Germany, which country then imposed a duty upon wheat when imported thereto from this country. The court therefore held that the importers' claim for the free entry of the merchandise under the body of the paragraph was effectually rebutted by their concession, which established the fact that the merchandise was dutiable under the proviso thereof. The protest, however, contained no claim for the assessment of the merchandise under the proviso, and therefore the court held that it must be overruled.

If it appeared by the present record that the paper in question was imported from a country which imposed an export charge upon the exportation of such paper or the wood pulp or pulp wood necessary for the manufacture thereof, then under the ruling in the Kuyper case, *supra*, the present protest should be overruled, since it claims assessment only under the body of paragraph 322, and not under the proviso thereof. But in the present case, unlike the Kuyper case, there is no evidence of any kind tending to prove that the printing paper in question was imported from a country which imposes an export charge upon either paper, wood pulp, or pulp wood. Therefore, since the merchandise responds to the general provisions of paragraph 322, as is claimed by the importers in their protest, the decision of the board placing it thereunder is *affirmed*.

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(T. D. 36262.)

Bonds—No fees.

Bonds, Forms 7301 and 7303, and term bonds given in lieu thereof, not being required by law, no fees are collectible thereon.

TREASURY DEPARTMENT, *March 23, 1916.*

SIR: The department refers to your letter of the 25th ultimo, requesting to be informed, in view of T. D. 36093, dated January 25, 1916, holding that bonds given by vessels to produce complete manifests and shippers' export declarations were not taxable under the act of October 22, 1914, whether navigation fee No. 11, prescribed in article 982 of the Customs Regulations of 1915, should be collected on such bonds.

The Secretary of Commerce expresses the opinion that no fee is chargeable on the bond provided for by customs form No. 7301 under sections 2654 and 4382 of the Revised Statutes. As the bond on Form 7303 is a similar one, being given to produce shippers' export declarations for goods exported to Canada or Mexico by car, vehicle, or ferry, it follows that no fee should be required therefor, or for the term bond which may be given in lieu thereof.

Respectfully, WM. P. MALBURN,
(103103.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 36263.)

Drawback on bitartrate of potash and tartaric acid.

T. D. 35890 of November 18, 1915, extended to cover bitartrate of potash and tartaric acid manufactured by the Tartar Chemical Co., of New York, N. Y., with the use of imported crude wine lees, argols, and tartar.—T. D. 18776 of January 5, 1898, revoked.

TREASURY DEPARTMENT, *March 23, 1916.*

SIR: Department's regulation of November 18, 1915 (T. D. 35890), providing for drawback on bitartrate of potash manufactured by Charles Pfizer & Co. (Inc.), of New York, with the use of imported crude wine lees, argols, and tartar, are hereby extended, so far as applicable, to cover bitartrate of potash and tartaric acid manufactured by the Tartar Chemical Co., of New York, N. Y., with the use of the same imported crude materials.

The records of manufacture and the sworn statement and certificate of manufacture required shall show the production of bitartrate of potash and tartaric acid, instead of the production of bitartrate of potash and calcium tartrate, and shall cover a period of three months instead of one month, as specified in T. D. 35890.

These regulations shall be effective as to bitartrate of potash and tartaric acid manufactured on or after April 1, 1916.

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The sworn statements of the manufacturers, dated June 28, 1915, and March 7, 1916, are transmitted herewith for filing in your office.

T. D. 18776 of January 5, 1898, is hereby revoked, the revocation to be effective as to bitartrate of potash and tartaric acid manufactured by the Tartar Chemical Co. on or after April 1, 1916.

Respectfully, WM. P. MALBURN,
(104576.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36264.)

Sewing machines—Toys.

Small sewing machines will continue to be assessed with duty at the rate of 35 per cent ad valorem as toys under paragraph 342 of the tariff act of 1913.

TREASURY DEPARTMENT, *March 22, 1916.*

SIR: I have to refer to your letter of January 25, 1916, relative to the decision of the Board of United States General Appraisers of January 21, 1916, Abstract 39148, wherein certain small sewing machines, which had been assessed with duty at 35 per cent ad valorem as toys under paragraph 342 of the tariff act of 1913, were held by the board to be free of duty as sewing machines under paragraph 441 of the said act.

Owing to the unsatisfactory nature of the record in the case, no appeal will be taken from the said decision. The Department is advised, however, by the Assistant Attorney General, that other cases are now pending before the Board in which it is expected to introduce additional testimony on the question at issue.

Pending a judicial determination of the question, therefore, you will continue to assess duty on small sewing machines at the rate of 35 per cent ad valorem as toys under paragraph 342 of the tariff act of 1913.

Respectfully, WM. P. MALBURN,
(104591.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 36265.)

Special agents.

Examination of the books and accounts of collectors.

TREASURY DEPARTMENT, *March 24, 1916.*

To special agents in charge and others concerned:

Pursuant to the provisions of section 2649, Revised Statutes, the special agents in charge of districts are hereby instructed to make or

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cause to be made an examination of the books, papers, and accounts of the collectors of customs at each port and customs station in their respective districts at least once in each year.

The collector or naval officer should be requested to designate an employee to assist in making this examination.

WM. P. MALBURN, *Assistant Secretary.*

(T. D. 36266.)

Errata—Customs Regulations.

Correction of errors in Customs Regulations of 1915.

TREASURY DEPARTMENT, *March 23, 1916.*

To collectors and other officers of the customs:

The following errors appear in the Customs Regulations of 1915, and the articles in which they occur are hereby corrected.

Decisions subsequent to T. D. 35443 in apparent conflict with the regulations will be followed by customs officers.

(92819.) BYRON R. NEWTON,
Acting Secretary of the Treasury.

Corrections in the Customs Regulations of 1915.

ART. 3.—The word "Charlestown" should be spelled "Charleston." The port of Philadelphia to include Camden and Gloucester City, N. J., instead of Gloucester, N. J.

ART. 5.—Insert "Charleston, S. C., South Carolina (16)." Insert "Skagway, Alaska, Alaska (31)."

ART. 20.—Correct to read as follows: "The documents granted at each port must be consecutively numbered, beginning anew at the commencement of each fiscal year."

ARTS. 43 and 44.—Second paragraph marginal reference should read "B/N general letter No. 17, June 11, 1912."

ART. 109.—Marginal note T. D. 32450 should be T. D. 22450.

ART. 114.—First paragraph, insert after the words "Orinoco River" the following: "And vessels of Sweden and Norway from ports in Sweden and Norway, and vessels of the United States from any port in Sweden and Norway, and in such other cases as by treaty may be provided."

ART. 127.—After the fifteenth line on page 101 insert the following: "Compensation of customs officers and employees for services performed on Sundays and holidays will be equal to one and one-half full days' pay for a day's work during regular working hours. Compensation for night service on Sundays and holidays will be the same as provided for night service on other days. (See art 1180.)" (T. D. 31606, 31684, 31752, 31823, 32043.)

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ART. 186.—First paragraph, add T. D. 27068 and T. D. 27154 to the marginal notes.

ART. 218.—The last paragraph should read as follows: "Merchandise imported by highway, or in vessels under 5 tons, not exceeding $100 in value, may be entered on a combined manifest and entry (customs Form 7523). This form of entry may also be accepted for each wagon or train of wagons conveying incomplete or partial shipments if the value of each separate importation does not exceed $100: *Provided, however,* That in cases where the total value of an importation when complete will exceed $100 a certified invoice shall be filed with the first entry, and subsequent wagonloads arriving within one week from the first arrival may be entered on extracts therefrom."

ART. 229.—Add the following paragraph: "No bond will be required for the production of declarations on customs Forms 3349 and 3351 on the entry of merchandise which is free of duty." (T. D. 29286.) Last marginal reference should be page 488.

ART. 240.—Insert before "if" in the fifth line the words, "all such merchandise, except free goods not of a perishable nature."

ART. 300.—After Portland strike out "Me." and insert "Oreg."

ART. 319.—Strike out the words "where labeled," third line from top of page 175, and substitute therefor the words "to which originally addressed."

ART. 320.—Line 4, after "611" insert "642."

ART. 342.—"Shocks" in line 7 should be "shooks."

ART. 355.—Strike out the following words in the seventh line: "Or agreed to be purchased."

ART. 361.—Strike from lines 2 and 3 of the third paragraph the words "or smoking tobacco in excess of 3 pounds."

ART. 386.—Lines 5 and 9 the words "or by the order" should read "and by the order."

ART. 395.—Add after the second paragraph the following: "An affidavit by the owner on customs Form 3365 shall also be filed on entry."

ART. 396.—Lines 2 and 8, after the word "arts" insert the word "agriculture."

ART. 401.—Strike out the first four lines and substitute therefor the following: "Art. 401. *Denaturing.*—Olive oil will be admitted free of duty when."

ART. 403.—After the word "widths" in third line of second paragraph insert the words "not under 10 inches and."

ART. 423.—Marginal note T. D. 25204 should be T. D. 25202.

ART. 436.—Strike out the words "to duty" and substitute "or other marine products to treatment as foreign merchandise."

ART. 446.—The second paragraph should read: "Stamps will be sold to the importer or owner by the collector of internal revenue

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upon the requisition of the collector of customs in substantially the following form:"

ART. 564. In the third line the word "or" should be "of."

ARTS. 586, 587, and 588.—Marginal reference should be par. "M" instead of par. "N."

ART. 608.—Marginal note T. D. 34352 should be T. D. 34252.

ART. 667.—Page 329, line 7 from the top, the word "from" should be "of."

ART. 672.—Insert "Bay City, Mich.," after "Bath, Me."

ART. 675.—Last paragraph, second line, "bill" should be "bills" and in the third line "names" should be "name."

ART. 685.—Strike out "Corry, Pa.," "Columbus, Ohio," "Fall River, Mass.," "Gloucester, Mass.," and Salem, Mass.," from first list, and insert "Erie, Pa.," "Cleveland, Ohio," and "Columbus, Ohio," in second list.

ART. 845.—The word "dimunition" in the seventh line should be "diminution."

ART. 883.—The word "immediate" wherever it appears on page 430 should read "intermediate."

ART. 982.—Fees 2b, 3b, and 6b should be "100 tons or more."

ART. 987.—On page 488, first paragraph, strike out "Customs Forms 3385 and 3389. Bonds for the redelivery of unexamined packages." Insert "Customs Form 3373. Bond for examination of articles at importer's premises." "Customs Form 3575. General export bond, when taken for exportation of rejected teas." "Customs Form 3385 A and B. Ten-day redelivery bond." "Customs Form 3401. Bond for examination of machinery at place of delivery or destination."

In second paragraph, strike out "Customs Form 3373. Bond for the redelivery of articles examined at importer's premises." "Customs Form 3401. Bond for examination and appraisement of machinery at place of delivery or destination."

In third paragraph strike out "Customs Form 3387. General redelivery bond, destined for a foreign port." Insert "Customs Form 3219. Bond of vessel proceeding with cargo to a foreign port."

On page 489, first paragraph, insert "Customs Form 3891. Bond for storage of imported teas."

In second paragraph, strike out, "Customs Form 3891. Bond for storage of imported tea." Insert, "Customs Form 3379. Bond to produce certified invoice, when the merchandise is free—$100."

ART. 999.—Marginal note T. D. 33618 should be T. D. 32618.

ART. 1005.—Cat. No. 3013a and b, now under "Monthly," should be rendered "Annually."

Insert under "Whenever necessary," page 498, Cat. No. 4801, "Expenditure requisition and authorization."

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Under monthly reports to the Auditor for the Treasury Department, add Cat. 4907-a, "Schedule of blanks sold."

ART. 1087.—"$90" wherever appearing should read "$100."

ART. 1161.—The word "extention," beginning on page 564 and ending on page 565, should read, "extension."

ART. 1181.—The "act of February 3, 1911," should read "act of February 13, 1911."

ART. 1184.—Third paragraph, sixth line, the word "form" should be "from."

(T. D. 36267.)

Article 1135 of the Customs Regulations of 1915 amended.

TREASURY DEPARTMENT, *March 25, 1916.*

To collectors of customs and others concerned:

It has heretofore been the practice when requests for verification of manufacturers' sworn statements and other special drawback matters requiring investigation in districts other than those in which the requests are made to refer the requests to the department for instructions.

In order to avoid delay and useless references, the last paragraph of article 1135 of the Customs Regulations of 1915 is amended to read as follows:

"Such verifications and other special drawback investigations requiring travel or investigation outside the agency district, should be referred by the agent receiving them to the agent in charge of the district in which the investigation is to be made."

(104212.) BYRON R. NEWTON,
Acting Secretary of the Treasury.

(T. D. 36268.)

Legality of reappraisement on pineapples.

Appeal directed from decision of the Board of United States General Appraisers of March 13, 1916, G. A. 7875 (T. D. 36250), involving the legality of a reappraisement on pineapples.

TREASURY DEPARTMENT, *March 25, 1916.*

SIR: The department is in receipt of your letter of the 15th instant, inviting attention to a decision of the Board of United States General Appraisers of March 13, 1916, G. A. 7875 (T. D. 36250), involving the legality of a reappraisement on pineapples, covered by protests 793232, etc., of the J. S. Johnson Co.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of

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the said decision, in accordance with the provision of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(104698.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36269.)

Drawback on cleaned currants.

Drawback on cleaned currants produced by the Hooven Mercantile Co., of New York, N. Y., from currants imported in bulk.

TREASURY DEPARTMENT, *March 25, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cleaned currants produced by the Hooven Mercantile Co., of New York, N. Y., from currants imported in bulk.

A record shall be kept, which will show, in the case of each lot of currants produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity and identity of the imported currants used, and the quantity of cleaned currants obtained. A sworn abstract from such record shall be filed with the drawback entry.

The allowance shall not exceed the net weight of the cleaned currants exported, with an addition to compensate for waste as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated March 10, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on cleaned currants exported on or after December 15, 1915.

Respectfully, WM. P. MALBURN,
(104812.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36270.)

Unwrought clay.

Certain unwrought clay, the chief use of which at the time of the passage of the tariff act of October 3, 1913, was for other than the manufacture of crucibles, is dutiable at the rate of 50 cents per ton as unwrought clay under paragraph 76 of the tariff act of October 3, 1913, rather than free of duty as common blue clay suitable for use in the manufacture of crucibles under paragraph 450 of the said act.

TREASURY DEPARTMENT, *March 27, 1916.*

SIR: The department is in receipt of your letter of the 21st instant, in regard to a difference in practice between your port and the port of Norfolk in the classification of certain unwrought clay.

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It appears that the clay is a light blue clay, unwrought, and at Norfolk it is being assessed with duty at the rate of 50 cents per ton under paragraph 76 of the tariff act of 1913 as unwrought clay not specially provided for, while at your port it is passed free of duty under paragraph 450 of the tariff as common blue clay suitable for use in the manufacture of crucibles.

It seems that until recently it has been the practice to assess duty on the merchandise as unwrought clay not specially provided for under paragraph 76, but since the outbreak of the war, with the stoppage of importations from Germany, this clay, while not commercially known as crucible clay, it appears has been used to a considerable extent in the manufacture of crucibles.

It further appears, however, that at the time of the passage of the tariff act of October 3, 1913, the chief use of the clay was for other than the manufacture of crucibles, and it would appear that its use at the time of the passage of the tariff act should control. (145 U. S., 561.)

You will therefore assess duty on merchandise of the character in question as unwrought clay not specially provided for at the rate of 50 cents per ton under paragraph 76 of the tariff act of 1913, leaving the importers to their remedy by protest if dissatisfied.

Respectfully, WM. P. MALBURN,
(100411.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36271—G. A. 7878.)

Goatskins.

Cape Angora goatskins, the growth on which shows only traces of Angora blood, being unsuited for the purposes for which Angora goat hair is ordinarily used and of half the value of Angora goat hair, held entitled to free entry.—G. A. 4381 (T. D. 20845); G. A. 4872 (T. D. 22831); Strauss *v.* United States (2 Ct. Cust. Appls., 203; T. D. 31946); United States *v.* Heckman (1 Ct. Cust. Appls., 275; T. D. 31318); United States *v.* American Express Co. (2 Ct. Cust. Appls., 95; T. D. 31636); Brennan *v.* United States (136 Fed., 743; T. D. 26317); Goussios *v.* United States (2 Ct. Cust. Appls., 317; T. D. 32051) cited.

United States General Appraisers, New York, March 24, 1916.

In the matter of protests 746284, etc., of Wm. Beadenkopf Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

[Reversed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of these protests is Cape Angora goatskins. The growth on

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these skins was assessed with duty at the rate of 15 per cent ad valorem under the provisions of paragraph 305 of the tariff act of 1913, which reads:

305. Hair of the Angora goat, alpaca, and other like animals, and all hair on the skin of such animals, 15 per centum ad valorem.

Free entry is claimed under paragraphs 603, 604, and 650 of said act. These paragraphs are as follows:

603. Skins of hares, rabbits, dogs, goats, and sheep, undressed.

604. Skins of all kinds, raw, and hides not specially provided for in this section.

650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect.

For many years prior to the enactment of the existing tariff law such skins with similar growth thereon were admitted to free entry. G. A. 4381 (T. D. 20845), G. A. 4872 (T. D. 22831).

The provisions of the free lists in previous tariff acts under which such skins were admitted to free entry were substantially reenacted in the revision of 1913, and unless it be that the separation of the hair of the Angora goat from the wool schedule, which was substantially transferred to the free list, and the placing of a separate duty thereon under an *eo nomine* provision therefor shall be held to exclude such skins as those under consideration from the free paragraph because of the growth thereon, the long-continued custom of admitting them to free entry may not be disturbed. Strauss *v.* United States (2 Ct. Cust. Appls., 203; T. D. 31946); United States *v.* Heckman (1 Ct. Cust. Appls., 272; T. D. 31318); United States *v.* American Express Co. (2 Ct. Cust. Appls., 95; T. D. 31636); Brennan *v.* United States (136 Fed., 743; T. D. 26317); Goussios *v.* United States (2 Ct. Cust. Appls., 317; T. D. 32051).

There is no mistaking the fact that the Angora goatskins, so called, the classification of which is here at issue, are in all material respects similar to those which have been the subject of numerous decisions, in each of which the growth thereon was held to be entitled to free entry.

We are clearly of the opinion that the specific provision for Angora goat hair, above quoted, does not take such skins out of the provisions therefor in the free list. What Congress provided for as a dutiable commodity in paragraph 305 was hair of the Angora goat, hair of the alpaca, and other like animals, whether on the skin or removed therefrom; and the witnesses are agreed that the growth on the skins in question, while it may show traces of Angora goat hair, is not in fact such hair and can not be used for any of the purposes for which such hair is ordinarily used. It is satisfactorily established

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that these skins are imported, not for the growth upon them, but that the pelts may be used in the making of leather, and that whatever part the growth plays in the business of the importers and dealers in such skins is merely incidental to the use of the skins for the making of leather. It is also shown beyond dispute that Angora goat hair, commonly known as mohair, is currently worth 100 per cent more in the market than the hair on these skins after being removed therefrom.

The witness Webb, called by the Government, testified:

Q. All of these bastard skins you examined; do I understand you to say they have at least some Angora goat in them?—A. I think the grandfather has been an Angora one time.

Q. Do they show traces of it?—A. Yes.

The purpose of Congress manifestly was not to levy duty on the growth found on the skins of degenerate goats with simply a trace of Angora blood, but on the hair of the Angora goat, which is of a character and quality altogether different from the growth on these skins.

The claim for free entry in each case must be sustained. See G. A. 6113 (T. D. 26610).

(T. D. 36272—G. A. 7879.)

Curling irons.

Curling irons composed of steel and wood, the former chief value, are properly classifiable for duty under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for, rather than dutiable under the provision for nippers and pliers of all kinds in paragraph 166.

United States General Appraisers, New York, March 24, 1916.

In the matter of protests 788126, etc., of A. Steinhardt & Bros. *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Comstock & Washburn (*Geo. J. Puckhafer* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

FISCHER, *General Appraiser:* The local appraiser returned the merchandise as consisting of "curling irons of metal, instruments with two lever handles working on a pivot, with gripping jaws." Duty was levied thereon at the rate of 30 per cent ad valorem under the provision in paragraph 166 of the act of 1913 for "nippers and pliers of all kinds wholly or partly manufactured," and they are claimed to be

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properly dutiable at but 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for.

As commonly understood, the term "nippers" signifies "an instrument like a pair of pincers or tongs; a grasping tool with cutting or pincing jaws; tweezers or pliers." (Standard Dictionary.) "An instrument, usually of iron or steel, having two jaws by which a thing may be firmly seized and held, or cut through, by pressure exerted upon the handles; forceps, pincers, pliers." (Oxford Dictionary.) And the word "pliers" is defined as "small long-jawed pincers for bending wire, etc., or for holding small objects." (Standard Dictionary.)

An examination of the sample in evidence satisfies us that, neither in appearance nor in the principle of operation do the curling irons in question respond to either of the foregoing definitions. Instead of closing the metal blades or jaws as in the case of nippers or pliers, pressure exerted on the wooden handles of these curling irons causes the blades to open, so that in actual operation they work exactly opposite to the pinching jaws of nippers and pliers.

We are therefore convinced that the terms "nippers" and "pliers" were not intended to include curling irons, and, being composed in chief value of steel, we hold the articles here in question to be properly dutiable at 20 per cent ad valorem under paragraph 167, as claimed in the protests. In all other respects, however, the protests are overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

Before Board 2, March 20, 1916.

No. 39410.—Protests 760726, etc., of Wm. Anderson & Co. (New York).

Cotton Cloth—Pile Fabrics.—Merchandise invoiced as "loop crêpe," classified as pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, is claimed dutiable as cotton cloth at 15 per cent under paragraph 252.

Opinion by Cooper, G. A. The fabrics in question were found to be either bleached or colored and were held dutiable as cotton cloth under paragraph 252, as claimed.

No. 39411.—Protests 742895-48703, etc., of Marshall Field & Co. (Chicago).

Embroidered Fabrics.—Merchandise classified as embroidered fabrics at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as cotton cloth under paragraph 252.

Opinion by Cooper, G. A. Certain items found not embroidered were held dutiable as cotton cloth under paragraph 252.

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No. 39412.—Protests 761528-54396, etc., of Marshall Field & Co. (Chicago).

COTTON TABLE DAMASK—TURKISH TOWELS—SHEETS.—Cotton table damask classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at 25 per cent under paragraph 263. Bath towels and sheets classified at 40 per cent under paragraph 257 are claimed duitable at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. On the authority of G. A. 7630 (T. D. 34903) and G. A. 7656 (T. D. 35019) the cotton table damask was held dutiable under paragraph 263 and the cotton bath towels and sheets under paragraph 264.

No. 39413.—Protest 793360-58088 of Marshall Field & Co. (Chicago).

TURKEY RED DAMASK—TABLE COVERS.—Turkey red damask classified as Jacquard figured upholstery goods at 35 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton table damask at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. The merchandise was found to be of the same character as that passed upon in G. A. 7780 (T. D. 35724). It was held dutiable under paragraph 263, as claimed.

No. 39414.—Protests 733438, etc., of W. O. Horn & Bro. et al. (New York).

FIGURED COTTON CLOTH—BLANKETS.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable under paragraphs 252 and 264, respectively.

Opinion by COOPER, G. A. On the authority of United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), affirming G. A. 7618 (T. D. 34858), the cotton cloth was held dutiable under paragraph 252. Jacquard figured cotton blankets were held dutiable under paragraph 264. G. A. 7748 (T. D. 35577) followed.

BEFORE BOARD 1, MARCH 22, 1916.

No. 39415.—Protest 794974 of R. Fabien & Co. (New York).

NONIMPORTATION.—Merchandise invoiced as 10 bags of bone, reported by the discharging officer as not found, is claimed not subject to duty under paragraph 463, tariff act of 1909, as assessed.

Opinion by MCCLELLAND, G. A. No affirmative proof that the merchandise did not come within the jurisdiction of the United States was offered. It may have been stolen from the dock where it was unloaded or carried away with other merchandise by mistake. Protest overruled. United States *v.* Brown (2 Ct. Cust. Appls., 189; T. D. 31943) followed.

No. 39416.—Protests 798881, etc., of P. Centemeri & Co. et al. (New York).

GLOVES, EMBROIDERED.—It is claimed that certain leather gloves are not subject to cumulative duty at 40 cents per dozen pairs under paragraph 459, tariff act of 1909, as stitched or embroidered with more than three single strands or cords.

Opinion by MCCLELLAND, G. A. On the authority of Altman *v.* United States (5 Ct. Cust. Appls., 412; T. D. 34941) the protests were sustained in part.

No. 39417.—Protests 772571, etc., of Henry Heil Chemical Co. (St. Louis).

RUBBER TUBING—DRUGGISTS' SUNDRIES.—Rubber tubing and so-called "india rubber policemen," classified as druggists' sundries at 15 per cent ad valorem under paragraph 368, tariff act of 1913, are claimed dutiable as manufactures of rubber at 10 per cent under the same paragraph.

Opinion by MCCLELLAND, G. A. It was found that the rubber tubing and policemen are used by chemists in the making of analyses, and that they do not belong to the class of articles known and dealt in as druggists' sundries. They were held dutiable at 10 per cent under paragraph 368, as claimed.

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BEFORE BOARD 2, MARCH 22, 1916.

No. 39418.—Protest 794395 of Linen Thread Co. (Boston).

MACHINE FOR MAKING FISH NETS.—A machine for making fish nets, classified at 25 per cent ad valorem under paragraph 165, tariff act of 1913, is claimed dutiable as a manufacture of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the authority of G. A. 7816 (T. D. 35898) the fish net making machine was held dutiable under paragraph 167, as claimed.

No. 39419.—Protest 794229 of American Express Co. (New York).

LITHOGRAPHIC PRINTS.—Lithographic prints classified at 15 cents per pound under paragraph 325, tariff act of 1913, are claimed dutiable as printed matter at 15 per cent ad valorem under paragraph 329.

Opinion by FISCHER, G. A. The proof offered was held insufficient. Protest overruled.

No. 39420.—Protest 793977 of Alex. Murphy & Co. (Philadelphia).

GREASE-PROOF OR IMITATION PARCHMENT PAPER.—Grease-proof or imitation parchment paper used for wrapping butter, lard, etc., classified at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed dutiable as wrapping paper not specially provided for at 25 per cent under paragraph 328.

Opinion by FISCHER, G. A. The paper in question was held specially provided for under paragraph 324. Protest overruled.

No. 39421.—Protest 780055 of T. D. Downing & Co. (New York).

TEXTBOOKS.—Medical textbooks entitled "Walker's Dermatology" and "Wheeler's Medicine," classified as books at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry as textbooks used in schools and other educational institutions, under paragraph 426.

Opinion by FISCHER, G. A. The books were found to be medical textbooks for use in medical schools and colleges. They were held free of duty under paragraph 426, as claimed.

No. 39422.—Protest 771250 of Belknap Hardware & Manufacturing Co. (Louisville).

SHOVELS—AGRICULTURAL IMPLEMENTS.—Shovels classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed entitled to free entry as agricultural implements under paragraph 391.

Opinion by FISCHER, G. A. The testimony did not establish that the shovels in question are chiefly used in agricultural pursuits. Protest overruled. United States v. Boker (6 Ct. Cust. Appls., 243; T. D. 35472) followed.

BEFORE BOARD 1, MARCH 24, 1916.

No. 39423.—Protests 770501, etc., of Shevlin-Clarke Co. et al. (Duluth).

DATE OF LIQUIDATION—WEATHER STRIPS.

McCLELLAND, *General Appraiser:* From the official papers in these cases it appears that the merchandise in question consists of strips of wood of various lengths, 1 inch by 3 inches, known as weather strips or "O. G. batts," used to cover cracks between boards. They were assessed with duty at the rate of 15 per cent ad valorem under paragraph 176 of the tariff act of 1913, and claims for free entry are made under paragraph 647 of said act.

The collector in his letter transmitting protest No. 770501 (his No. 20) states that the date of liquidation of the entry covering the merchandise in question was November 12, 1914, and that the protest was not filed until December 14, 1914. It appears, however, that entry of the merchandise was made at Ranier, a subport of Duluth, and that the entry was not liquidated at said subport, but at the port of Duluth; the

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date of such liquidation written upon the entry is November 12. There is also written upon the entry in red ink, "Protest filed Dec. 14, 1914, 10.30 a. m." This indorsement was likewise made at the port of Duluth.

Attached to the collector's letter of transmittal is a letter written to the collector by Deputy Collector J. A. Rose, evidently the officer in charge at the subport of Ranier. This officer directs attention to the fact that the bulletin giving notice of the date of liquidation of the entry was posted November 14, and that upon inquiry being made of him by the agent of the importers as to the date of liquidation he stated that it was November 14. This officer also calls attention to article 1034 of the Customs Regulations, which states that "notice of liquidation shall on the date thereof be conspicuously posted in the collector's office for the information of the importers," and also to article 1069, which provides that "the date of ascertainment and liquidation is the date of liquidation stamped upon the entry, and the posting of the same in a conspicuous place in the customhouse is held to be a sufficient notice thereof to the importer."

The subport of Ranier was doubtless instituted by the Government for the convenience of importers of merchandise. At such port importers may enter merchandise and the duty thereon is collected by the representative of the collector of customs for the district in which said subport is located. The time consumed in referring papers from the subport to the home port for the convenience of the Government in the conduct of customs administration may not properly be charged against the importer as a part of his statutory time within which he may exercise his lawful right. There are subports within the jurisdiction of the United States where it frequently takes 30 days or more for a communication therefrom to reach the home port and vice versa. In G. A. 7521 (T. D. 34025) it was held that a reliquidation of an entry made at the home port did not become effective nor the time for protest against the reclassification commence to run until notice thereof had been received at the subport where the entry was made.

In this case it appears that the liquidation was bulletined on November 14 and that the protest was lodged at the subport, the port of entry of the merchandise, on December 12 following, and the protest fee of $1 paid on that day. We therefore hold that protest 770501 was lodged within the statutory time after liquidation.

The collector states that samples of similar importations were submitted with his protests Nos. 18, 19, and 20, No. 18 being the board's No. 768079 which was the subject of Abstract 37482, wherein such weather strips were held to be entitled to free entry as claimed. It thus appears that the merchandise involved is the same as that covered by Abstract 37482, *supra*, and in harmony therewith, and following G. A. 7546 (T. D. 34305) and United States *v.* Myers (5 Ct. Cust. Appls., 541; T. D. 35179), the protests are sustained.

No. 39424.—Protests 783975, etc., of M. J. Corbett & Co. et al. (New York).

ASBESTOS MANUFACTURES.—Merchandise returned by the appraiser as asbestos yarn, classified at 20 per cent ad valorem under paragraph 367, tariff act of 1913, is claimed free of duty as asbestos unmanufactured under paragraph 406, or dutiable as manufactures of asbestos at 10 per cent under paragraph 367.

Opinion by MCCLELLAND, G. A. The merchandise was found to be asbestos, but excluded from the free paragraph by reason of the fact that it has been subjected to certain processes, which, while they do not destroy its identity as asbestos, nevertheless fit it for a special use in packing furnaces. It was held dutiable as a manufacture of asbestos under paragraph 367.

No. 39425.—Protest 787608 of Roessler & Hasslacher Chemical Co. (New York).

CHROME GREEN—COLOR.—Merchandise classified as chrome green at 20 per cent ad valorem under paragraph 54, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 63.

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Opinion by McClelland, G. A. The chrome green in question was found to be the same as that passed upon in Abstract 37081 and held subject to duty at 15 per cent under paragraph 63. Protest sustained.

No. 39426.—Protest 742894–14691 of Marshall Field & Co. (Chicago).

Bead Necklaces—Jewelry.—Certain necklaces and neck chains classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of wood or bark at 15 per cent under paragraph 176, as manufactures of glass or paste at 30 per cent under paragraph 95, or as beaded articles at 50 per cent under paragraph 333.

Opinion by Sullivan, G. A. On the authority of G. A 7754 (T. D 35591). Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198), American Bead Co. *v.* United States (7 Ct Cust. Appls , —; T. D. 36259), and United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), the necklaces and neckchains in question were held properly classified under paragraph 356.

No. 39427.—Protest 749203–49259 of Mee Lung Chin Kee & Co. (Chicago).

Bracelets—Jewelry.—Colored glass bracelets classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as ornamented or decorated glass articles at 45 per cent under paragraph 84, or as toys at 35 per cent under paragraph 342.

Opinion by Sullivan, G. A. The bracelets in question were held properly classified under paragraph 356. G. A. 7754 (T. D. 35591), and Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198), followed.

No. 39428.—Protests 763866, etc., of Sussfeld, Lorsch & Co. (New York).

Compasses.—Small unfinished brass compasses classified as material of metal suitable for use in the manufacture of jewelry, at 50 per cent ad valorem, under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167. Merchandise classified as parts of charms at 75 per cent under paragraph 448, tariff act of 1909, are claimed dutiable at 45 per cent under paragraph 199.

Opinion by Sullivan, G. A. On the authority of Sussfeld *v.* United States (5 Ct. Cust. Appls., 382; T. D. 34875), the compasses in question were held dutiable as manufactures of metal, as claimed.

No. 39429.—Protest 767796–54989 of Marshall Field & Co. (Chicago).

Imitation Jet Jewelry.—Barettes, brooches, lavallieres, charms, chains, pendants, and bracelets, made of black glass or paste, known as imitation jet, and blackened base metal, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable according to the component material of chief value at various rates.

Opinion by Sullivan, G. A. It was admitted that all the articles, with the exception of the barettes, are commonly known as jewelry. They were held properly classified under paragraph 356. The barettes were held dutiable at 30 per cent under paragraph 95.

No. 39430.—Protest 785611–57010 of Marshall Field & Co. (Chicago).

Bracelets—Brooches—Jewelry.—Merchandise classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed dutiable at 50 per cent under paragraph 176, or at 30 per cent under paragraph 95.

Opinion by Sullivan, G. A. The articles were found to be bracelets of black wood beads on a steel string, brooches and collars composed of metal set with imitation precious stones, and colored glass-bead necklaces. They were admitted to be commercially known as jewelry and held properly classified under paragraph 356.

No. 39431.—Protests 772279–55443, etc., of Bernard, Judae & Co. (Chicago).

Long Chains—Jewelry.—Long chains and necklaces composed in chief value of colored glass and beads, classified as jewelry at 60 per cent ad valorem under para-

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graph 356, tariff act of 1913, are claimed dutiable at 50 per cent as beaded articles under paragraph 333.

Opinion by SULLIVAN, G. A. Upon the admission that the articles in question are jewelry, they were held properly classified under paragraph 356.

No. 39432.—Protest 775366-55304 of Marshall Field & Co. (Chicago).

JET JEWELRY.—Guard chains, brooches, bracelets, necklaces, etc., composed in chief value of real jet, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable under the provision for jet in paragraph 98, at 45 per cent.

Opinion by SULLIVAN, G. A. The articles being commonly and commercially known as jewelry were held properly classified under paragraph 356.

No. 39433.—Protest 779453-56763 of Marshall Field & Co. (Chicago).

NECKLACES—JEWELRY.—Necklaces and chains composed of glass beads with metal clasp, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. Although it was proved that beads are the component material of chief value in the merchandise, it was admitted that the articles are commonly or commercially known as jewelry. Protest overruled.

No. 39434.—Protest 797318 of Gustav Martin (Boston).

UREA.—Urea classified under the specific provision therefor in paragraph 18, tariff act of 1913, at 25 per cent ad valorem, is claimed dutiable as a chemical compound at 15 per cent under paragraph 5.

Opinion by BROWN, G. A. Protest unsupported; overruled.

No. 39435.—Protests 795780 and 796872 of Lines & Warne (New York).

FLANNELS.—Silk stripe gauze flannel, white silk stripe gauze flannel, all wool flannel, Ceylon flannel, white cricket flannel, and all wool gauze flannel, classified at 35 per cent ad valorem under garagraph 290, tariff act of 1913, are claimed dutiable under paragraph 289.

Opinions by BROWN, G. A. On the authority of G. A. 7772 (T. D. 35703) the flannel in question was held dutiable under paragraph 289, as claimed.

No. 39436.—Protest 795781 of Thomas Nevin (New York).

VACCINE VIRUS IN AMPOULES.—Vaccine virus in ampoules, classified as a medicinal substance at 25 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed free of duty under paragraph 400.

Opinion by BROWN, G. A. Vaccine virus in ampoules was held properly classified under paragraph 17. Abstract 39158 followed.

No. 39437.—Protest 790955 of D. F. Young, jr. (New York).

BALSAM OF COPAIBA.—Merchandise classified as balsam of copaiba under paragraph 9, tariff act of 1913, is claimed free of duty as a crude drug under paragraph 477.

Opinion by BROWN, G. A. Protest unsupported; overruled.

No. 39438.—Protest 787565 of Balkan Importing Co. (New York).

FISH ROE.—It is claimed in this case that merchandise classified as preserved fish roe at 30 per cent ad valorem under paragraph 216, tariff act of 1913, is free of duty as eggs of fish under paragraph 478.

Opinion by BROWN, G. A. Protest unsupported; overruled.

No. 39439.—Protests 751252, etc., of R. Hillier's Son Co. et al. (New York).

LAVENDER FLOWERS—CRUDE DRUG.—Merchandise classified at 20 per cent ad valorem under paragraph 49, tariff act of 1913, is claimed free of duty as crude drugs under paragraph 477.

Opinion by BROWN, G. A. On the authority of Abstract 39004 lavender flowers were held free of duty under paragraph 477. Protests overruled as to orange flower buds and violet flowers.

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No. 39440.—Protests 594131, etc., of A. O. Bjelland et al. (Portland, Oreg., and New York).

FISH IN TINS.—Herrings, pickled or salted, smoked or kippered, classified at 30 per cent ad valorem under paragraph 270, tariff act of 1909, are claimed dutiable at one-half of 1 cent per pound under paragraph 272.

Opinion by BROWN, G. A. On the authority of United States *v.* Miller (5 Ct. Cust. Appls., 256; T. D. 34443) the merchandise in question was held dutiable under paragraph 272, as claimed. Protests sustained in part.

BEFORE BOARD 2, MARCH 24, 1916.

No. 39441.—Protests 788407, etc., of J. D. Randall Co. (Cleveland).

SEWING-MACHINE NEEDLES.—Randall needles classified as needles for sewing machines at 20 per cent ad valorem under paragraph 135, tariff act of 1913, are claimed entitled to free entry as needles for shoe machines under paragraph 555.

Opinion by FISCHER, G. A. From the evidence it was found that the needles are specially constructed and designed for harness making and that their use in connection with shoemaking is merely incidental and exceptional. They were held properly classified under paragraph 135.

No. 39442.—Protest 790564 of Hensel, Bruckmann & Lorbacher (New York).

STEEL BOWS, MAGNETIZED.—Merchandise invoiced as plain forgings of tungsten steel, consisting of steel bows magnetized, classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, is claimed dutiable as pressed, forged, or stamped alloy steel at 15 per cent under paragraph 110.

Opinion by FISCHER, G. A. It was found that these bows are made from bars of steel which have been cut accurately to the proper dimensions and then bent into the proper shapes. They were held properly classified as manufactures of metal under paragraph 167.

No. 39443.—Protest 791482-57872 of Kurnstadter Bros. (Chicago).

SILVER-PLATED METAL ARTICLES.—It is claimed here that certain metal articles are not silver plated, as classified, under pargraph 167, tariff act of 1913.

Opinion by FISCHER, G. A. The proof was found insufficient to warrant a disturbance of the collector's action.

No. 39444.—Protest 792688 of J. B. Mast & Co. (New York).

METAL-COATED PAPER INITIALS.—Metal-coated paper initials classified as articles composed wholly or in chief value of metal-coated paper at 35 per cent ad valorem under paragraph 324, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 332.

Opinion by FISCHER, G. A. On the authority of Abstract 37041 (T. D. 35000) the merchandise was held dutiable under paragraph 324, as classified. G. A. 7852 (T. D. 36161) noted.

(T. D. 36273.)

Drawback on bitartrate of potash and tartaric acid.

T. D. 36263 of March 23, 1916, extended to cover bitartrate of potash and tartaric acid exported after having been ground and bolted by the Royal Baking Powder Co., of New York, N. Y.

TREASURY DEPARTMENT, *March 29, 1916.*

SIR: The department's regulations of March 23, 1916 (T. D. 36263), providing for drawback on bitartrate of potash and tartaric acid

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manufactured by the Tartar Chemical Co., of New York, N. Y., with the use of imported crude wine lees, argols, and tartar, are hereby extended to cover such bitartrate of potash and tartaric acid exported after having been ground and bolted by the Royal Baking Powder Co., of New York, N. Y.

The quantity of ground and bolted bitartrate of potash or tartaric acid which may be taken as a basis for the allowance of drawback shall not exceed the net weight of the same exported.

The sworn statement of the Royal Baking Powder Co., dated May 14, 1915, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(70852.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36274.)

Litmus paper.

Litmus paper dutiable in sheets as bibulous paper at the rate of 30 per cent ad valorem under paragraph 323, tariff act of 1913, or, if in book form, as books not specially provided for at the rate of 15 per cent ad valorem under paragraph 329, rather than free of duty as litmus, prepared, under paragraph 536.

TREASURY DEPARTMENT, *March 29, 1916.*

SIR: The department is in receipt, by reference from the Auditor for the Treasury Department, of your letter of the 26th ultimo and other correspondence relative to the classification of litmus paper.

It appears that the paper is saturated with litmus and is passed free of duty at your port as litmus, prepared, under paragraph 536 of the tariff act of October 3, 1913, while at the port of New York it appears it is the practice to assess duty on such merchandise in sheets as bibulous paper at the rate of 30 per cent ad valorem under paragraph 323 of the tariff, or, if in book form, as books not specially provided for at the rate of 15 per cent ad valorem under paragraph 329.

Investigation made by the department shows that the merchandise in question is commercially known as litmus paper. The department is of the opinion that the practice at New York in the classification of the merchandise is in accordance with the law, and you will conform your practice thereto in future cases.

Respectfully, WM. P. MALBURN,
(98379.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

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(T. D. 36275.)

Drawback on hemstitched pillow cases, etc.

Drawback on hemstitched pillow cases, doilies, tray cloths, and similar articles manufactured by the Criterion Handkerchief Co., of Passaic, N. J., from imported linen piece goods for the account of Edward Gribbon & Sons (Ltd.), of New York, N. Y.

TREASURY DEPARTMENT, *March 30, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on hemstitched pillow cases, doilies, tray cloths, center pieces, scarfs, shams, sheets, and similar articles, manufactured by the Criterion Handkerchief Co., of Passaic, N. J., from imported linen piece goods for the account of Edward Gribbon & Sons (Ltd.), of New York, N. Y.

A manufacturing record shall be kept by the Criterion Handkerchief Co. in the manner described in their sworn statement of February 29, 1916, transmitted herewith, which will show, in the case of each lot of articles manufactured for the account of Edward Gribbon & Sons (Ltd.), the lot number and date of manufacture thereof, the number of articles of each kind produced, the quantity and identity of the imported linen piece goods used, and the quantity of such piece goods appearing in each class of articles. A sworn abstract from such manufacturing records shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported linen piece goods appearing in the exported articles, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on the aritcles covered thereby exported on or after January 26, 1916.

The sworn statement of Edward Gribbon & Sons (Ltd.), dated February 29, 1916, is also transmitted herewith.

Respectfully, WM. P. MALBURN,
(72474.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36276.)

Drawback on wearing apparel.

Drawback on wearing apparel manufactured by the C. Kenyon Co., of Brooklyn, N. Y., with the use of imported cloths.—T. D. 29904 of July 12, 1909, revoked.

TREASURY DEPARTMENT, *March 31, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on men's and

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women's wearing apparel manufactured by the C. Kenyon Co., of Brooklyn, N. Y., with the use of imported cloths.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated March 8, 1916, transmitted herewith, which will show, in the case of each lot of wearing apparel manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of articles of each kind produced, the quantity, character, value, and identity of the imported cloths used in the manufacture thereof, the quantities of such cloths appearing in the finished articles, and the quantity and value of waste incurred. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported cloth appearing in the exported wearing apparel, as shown by the sworn abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported cloth which the value thereof will replace.

T. D. 29904 of July 12, 1909, is hereby revoked.

Respectfully, WM. P. MALBURN,
(59427.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36277.)

Values of foreign coins.

[Circular No. 1.]

TREASURY DEPARTMENT, *April 1, 1916.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of pure metal contents of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning April 1, 1916, expressed in any such metallic currencies.

Entries of merchandise liquidated upon the values proclaimed herein will be subject to reliquidation upon the order of the Secretary of the Treasury whenever satisfactory evidence shall be produced to him showing that the values in United States currency of the foreign money specified in the invoices were at the date of certification at least 10 per cent more or less than the values herein proclaimed.

BYRON R. NEWTON,
Acting Secretary of the Treasury.

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Estimate by Director of the Mint of the values of foreign coins.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.[a]
Argentine Republic	Gold	Peso	$0.9648	Currency: Depreciated paper, convertible at 44 per cent of face value.
Austria-Hungary	do	Crown	.2026	
Belgium	Gold and silver.	Franc	.1930	Member of Latin Union; gold is the actual standard.
Bolivia	Gold	Boliviano	.3893	12½ bolivianos equal 1 pound sterling.
Brazil	do	Milreis	.5462	Currency: Government paper; exchange rate about 25 cents to the milreis.
British colonies in Australasia and Africa.	do	Pound sterling	4.8665	
Canada	do	Dollar	1.0000	
Central American States:				
Costa Rica	Gold	Colon	.4653	
British Honduras	do	Dollar	1.0000	
Nicaragua	do	Cordoba	1.0000	
Guatemala	Silver	Peso	.4211	Guatemala: Currency, inconvertible paper; exchange rate about 40 pesos equal $1.
Honduras				Honduras: Currency, bank notes.
Salvador				Salvador: Currency, convertible into silver on demand.
Chile	Gold	do	.3650	Currency: Inconvertible paper; exchange rate, approximately, $0.14.
China	Silver	Tael — Amoy	.6904	The tael is a unit of weight, not a coin; the customs unit is the Haikwan tael. The values of other taels are based on their relation to the value of the Haikwan tael.
		Tael — Canton	.6883	
		Tael — Chefoo	.6603	
		Tael — Chin Kiang	.6744	
		Tael — Fuchan	.6386	
		Tael — Haikwan (customs)	.7024	
		Tael — Hankow	.6459	
		Tael — Kiaochow	.6690	
		Tael — Nanking	.6831	
		Tael — Niuchwang	.6474	
		Tael — Ningpo	.6637	
		Tael — Peking	.6730	
		Tael — Shanghai	.6306	
		Tael — Swatow	.6377	
		Tael — Takau	.6947	
		Tael — Tientsin	.6690	
		Dollar — Yuan	.4524	
		Dollar — Hongkong	.4541	
		Dollar — British	.4541	
		Dollar — Mexican	.4574	
Colombia	Gold	Dollar	1.0000	Currency: Inconvertible paper; exchange rate, approximately, $105 paper to $1 gold.
Cuba	do	Peso	1.0000	
Denmark	do	Crown	.2680	
Ecuador	do	Sucre	.4867	
Egypt	do	Pound (100 piasters)	4.9431	The actual standard is the British pound sterling, which is legal tender for 97½ piasters.
Finland	do	Mark	.1930	
France	Gold and silver.	Franc	.1930	Member of Latin Union; gold is the actual standard.
German Empire	Gold	Mark	.2382	
Great Britain	do	Pound sterling	4.8665	
Greece	Gold and silver.	Drachma	.1930	Do.
Haiti	Gold	Gourde	.9647	Currency: Inconvertible paper; exchange rate, approximately, $0.16.
India (British)	do	Rupee	.3244	15 rupees equal 1 pound sterling.
Italy	Gold and silver.	Lira	.1930	Member of Latin Union; gold is the actual standard.
Japan	Gold	Yen	.4985	

[a] The exchange rates shown under this heading are not to take the place of the consular certificate where it is available

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Estimate by Director of the Mint of the values of foreign coins—Continued.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.
Liberia	Gold	Dollar	$1.0000	Currency: Depreciated silver token coins. Customs duties are collected in gold.
Mexico	do	Peso	.4985	Mexican exchange rate violently fluctuating, approximately, $0.15.
Netherlands	do	Florin	.4020	
Newfoundland	do	Dollar	1.0139	
Norway	do	Crown	.2680	
Panama	do	Balboa	1.0000	
Paraguay	Silver	Peso	.4211	Currency: Depreciated paper; exchange rate 1,550 per cent.
Persia	Gold and silver.	Kran	.1700	This is the value of the gold kran. Currency is silver circulating above its metallic value: exchange value of silver kran, approximately, $0.0675.
Peru	Gold	Libra	4.8665	
Philippine Islands	do	Peso	.5000	
Portugal	do	Escudo	1.0806	Currency: Inconvertible paper: exchange rate, approximately, $0.70½.
Roumania	do	Leu	.1930	
Russia	do	Ruble	.5146	
Santo Domingo	do	Dollar	1.0000	
Serbia	do	Dinar	.1930	
Siam	do	Tical	.3709	
Spain	Gold and silver.	Peseta	.1930	Valuation is for the gold peseta: currency is silver circulating above its metallic value; exchange value, approximately, $0.20.
Straits Settlements	Gold	Dollar	.5678	
Sweden	do	Crown	.2680	
Switzerland	do	Franc	.1930	Member of Latin Union: gold is the actual standard.
Turkey	do	Piaster	.0440	100 piasters equal to the Turkish £.
Uruguay	do	Peso	1.0342	
Venezuela	do	Bolivar	.1930	

(T. D. 36278.)

Drawback on Bludwine sirup.

Drawback on Bludwine sirup manufactured by the New York Bludwine Co., of New York, N. Y., with the use of refined sugar produced from imported raw sugar.

TREASURY DEPARTMENT, *April 3, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on a preparation designated as "Bludwine sirup," manufactured by the New York Bludwine Co., of New York, N. Y., with the use of refined sugar produced from imported raw sugar.

A manufacturing record shall be kept, which will show, in the case of each lot of Bludwine sirup manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of refined sugar, and the quantities of other materials used, and the quantity of Bludwine sirup obtained. A

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sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as the basis for the allowance of drawback shall not exceed the quantity used in the manufacture of the exported preparation, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated March 18, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on Bludwine sirup exported on and after October 28, 1915.

Respectfully, WM. P. MALBURN,
(104179.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36279.)

Duty collected upon higher than the entered or appraised value.

No provision of law under which duties can be collected upon a greater value than that entered or returned by appraising officers. Customs officers should not, therefore, assume to appraise merchandise at a value higher than that returned by the appraiser and to collect increased duties on such valuation.

TREASURY DEPARTMENT, *March 29, 1916.*

SIR: The department is in receipt of your letter of the 14th instant, forwarding a certified check for $31.60 in payment of duties alleged to be due on certain fishing tackle covered by entry No. 17413, dated December 15, 1915, imported by A. B. & Co.

It appears that sometime prior to July 15, 1915, the importers of this merchandise received notice from the manufacturers in England that an advance of 10 per cent would be made in the price of all such merchandise ordered after July 15, 1915; that the importers ordered the merchandise prior to the date named, and such order was accepted by the manufacturers at the prices formerly prevailing, and the goods shipped from England on or about November 15, 1915; that it arrived at San Francisco and was entered on December 15, 1915, at the invoice values, which were the prices actually paid therefor; that the entered values were returned by the appraiser as correct; that no appeal for reappraisement was filed within the time fixed by statute: and that the entry was liquidated upon the entered and appraised value.

It further appears that in February, 1916, certain shipments of similar fishing tackle entered at San Francisco were advanced by the appraiser 10 per cent above the values stated in said entry No. 17413; that a reappraisement was requested by the collector of similar tackle covered by other entries appraised at a lower value; and that as the

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time for reappraisement on this importation had expired, the matter was called to the importers' attention, and they, apparently believing that such amount was due from them to the Government, tendered a check for $31.60, which represents the increased amount of duties that would have been collected if the said merchandise had been entered at a price 10 per cent above the invoiced value. In making this offer, the importers state:

> Inasmuch as our shipment had been passed through the customhouse and liquidated more than 60 days prior to the appraiser at San Francisco changing his views as to the market price and no appeal to general appraiser having been made, it is impossible for the Government to raise our goods by this amount 10 per cent. However, our agents * * * have consulted with the special agent of the Treasury Department, and it is the advice of both parties that we should pay the duty on this 10 per cent advance.

It is immaterial whether the appraiser's return of the entered values as correct was due to a lack of knowledge of the notice of advance of all goods ordered after July 15, 1915, or whether it was due to the construction placed by him upon certain decisions of the United States General Appraisers, holding in effect that when an advance in value is made by shippers upon merchandise ordered after a certain date, the advanced prices are not to be taken as the dutiable market value upon importations into the United States until an actual delivery at such advanced prices has been made. The entered values were returned by the appraiser as correct. This appraisement was final and conclusive, in the absence of an appeal for reappraisement. To find a higher value as the dutiable value of the merchandise requires a new appraisement, with a finding of fact by the appraising officer that the market value of said merchandise was greater than that returned by the appraiser. Under the law, there is no one authorized to make such a finding of fact or to make a new appraisement of the merchandise. If the merchandise had been entered upon a false invoice, or if the importers had been guilty of the acts specified in paragraphs G and H of section 3 of the tariff act, they would have rendered themselves liable to the penalties prescribed by said paragraphs, and their civil liability under paragraph H might be compromised under section 3469 of the Revised Statutes, but, under the facts as presented, there was and is no liability on their part for the payment to the Government of any amount. While it is possible that the Government may lawfully accept moneys voluntarily offered by importers or others, even though not legally due the United States, the offer in question does not appear to be a voluntary offer or gift. It was made only after representations to the importers by the department's officers that it was due to the Government. The money offered can not, therefore, be accepted as a voluntary contribution. There was no liability on the part of

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the importers to pay anything to the Government on the transaction in question. There is, therefore, no claim which might properly be compromised under section 3469, Revised Statutes.

The department can not, therefore, accept the sum tendered, and as it appears to have been offered by the said company through an error on account of representations made by the Government's officers and through a misapprehension as to their legal rights, you are hereby directed to return the check to the importers, with the statement that the department declines to accept the same, for the reason that it is not legally due the Government.

Respectfully,

WM. P. MALBURN, *Assistant Secretary.*

SPECIAL AGENT IN CHARGE, *San Francisco, Cal.*

(T. D. 36280—G. A. 7880.)

Entered value—Action of the Secretary of the Treasury final.

The collector can not, under the provisions of subsection I of section 3, tariff act of 1913, assess merchandise at a less value than the entered value unless so directed to do by the Secretary of the Treasury. The action of the Secretary under the power given him by this provision of law is not subject to review by this board.—Strohrer's Keystone Pickle Works case, G. A. 7764 (T. D. 35629), approved.

BROWN, *General Appraiser*, dissenting, holds: That when the record shows that all the requirements mentioned in paragraph I of section 3 of the act of 1913 have been complied with the duty of the Secretary of the Treasury is ministerial, and if the "direction" is nevertheless refused relief by protest is open to the importer, and the board may direct a reliquidation on the appraised value.

United States General Appraisers, New York, March 30, 1916.

In the matter of protest 786221 of John L. Vandiver against the assessment of duty by the collector of customs at the port of Philadelphia.

[Affirmed.]

Importer not represented by counsel.

Bert Hanson, Assistant Attorney General, for the United States.

Before Board 3 (WAITE, HAY, and BROWN, General Appraisers; HAY, G. A., concurring; BROWN, G. A., dissenting).

WAITE, *General Appraiser:* No testimony was taken in this case. The facts appear from the record as follows:

On entry the importers included in the entered value certain agents' commissions, which they considered to be nondutiable charges, but which they included in the entered value for the following reason stated on entry:

Importer adds marks 76 to make market value as indicated by appraiser's advance in similar cases now pending on appeal to reappraisement. This addition is made pursuant to subsection I of section 3, tariff act of October 5, 1913.

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That portion of subsection I of section 3 referred to reads as follows:

I. * * * The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, and the importer's contention shall subsequently be sustained by a final decision on reappraisement, and it shall appear that the action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, and the Secretary of the Treasury shall accompany his directions with a statement of his conclusions and his reasons therefor.

Reappraisement was had and the invoice value was sustained by the general appraiser. The matter was submitted to the department and its decision is stated in the following language:

The department does not regard the action of the importer in making an advance, merely because a previous advance has been made by the appraiser, and without inquiry on his part as to the true market value, as constituting the good faith and diligence contemplated by the statute. For this reason and also because the importer failed to certify that the entered value was higher than the market value, as required by the statute, the application must be denied.

The rights of the importer under subsection I above referred to were considered by the board in G. A. 7764 (T. D. 35629), and it was held that the action of the Secretary of the Treasury under the power given by this provision of law is not subject to review. Following the construction of law thus laid down, we overrule the protest.

CONCURRING OPINION.

HAY, *General Appraiser:* I concur in the decision overruling this protest, but feel that it is desirable to slightly amplify what was said in Strohrer's Keystone Pickle Works' case, G. A. 7764 (T. D. 35629), upon which the decision in this case rests.

Prior to the enactment of the law of 1913 the collector was expressly forbidden to assess duty in any "case upon an amount less than the entered value." It was settled law at that time that, notwithstanding an appraisement or reappraisement of merchandise at a value less than that at which it was entered, the collector could not lawfully, nor could he be required to take duty upon an amount less than the entered value. At the time of the enactment of the law of 1913 that was not an open question. The law of 1913 simply reenacted that provision of law with the modification, "unless by direction of the Secretary of the Treasury." In other words, prior to the enactment of the law of 1913 the collector could not take duty upon an amount less than the entered value; after the law of 1913 he could not take duty upon an amount less than the entered value unless by direction

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of the Secretary of the Treasury. . If the collector should take duty upon an amount less than the entered value when he had not the direction of the Secretary of the Treasury so to do, he would violate the law just the same as if prior to the law of 1913 he should have taken duty upon an amount less than the entered value. Whether, therefore, the provisions of paragraph I of section 3 are mandatory or directory upon the Secretary of the Treasury, they do not change the powers or duties of the collector. The law still prohibits him from taking duty upon an amount less than the entered value, except upon a certain condition, to wit, the direction of the Secretary of the Treasury. The remainder of the law, as was said in Strohrer's Keystone Pickle Works case, *supra*, relates to the Secretary's duties, and in this proceeding the board has no jurisdiction over the Secretary or power to compel him to discharge the duties devolved upon him by law; hence it is not its function to inquire whether that law is mandatory upon the Secretary or addressed to his discretion. Our mandate reaches only the collector, and if we should require the collector to reliquidate the entry upon an amount less than the entered value, wherein the Secretary had not so directed, it would be to require him to disobey the express command of the statute. This statement is sufficient to indicate that the decision of the United States Circuit Court of Appeals in United States *v.* Lucius Beebe (122 Fed., 762) has no application to the question here under consideration.

DISSENTING OPINION.

BROWN, *General Appraiser:* In this case an advance was made by the importers on entry at the port of Philadelphia to meet a similar advance by the appraiser on two of his previous entries at the port of Baltimore, as to which Baltimore entries he had already appealed to reappraisement, and wherein the entered values were subsequently sustained on final reappraisement.

Following the decision on reappraisement of the Baltimore entries, upon final reappraisement covering the Philadelphia entry here in dispute, the invoice value was sustained.

The importer's protest reads:

I protest against your action in liquidating my entry, No. 20382, covering an importation of toys per steamer *Brandenburg* from Bremen, August 5, 1914, without deduction from the entered value, as provided for under the provisions of paragraph I of section 3 of the tariff act of 1913, in accordance with the claim made by me at the time of entry and the allowance by the board of United States General Appraisers, for the nondutiable charges relating to certain agents' commissions, in accordance with the reappraisement called for by me and favorably considered by the said Board of General Appraisers. Entry liquidated March 26, 1915.

The question involved in this case was not one as to the market value of the goods *per se*, but involved only the dutiability of certain agents' commissions charged on the invoices. There was no necessity for any further diligence or inquiry on the

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part of the importer than that of presenting the proper evidence to the Board of General Appraisers to sustain the claim that the said agents' commissions were bona fide commissions, and therefore not subject to duty.

I claim that due allowance or reduction from the entered value should have been made on the liquidation of my entry in accordance with the provisions of paragraph I, section 3, of the tariff act of 1913. I complied with the requirements of said act, and on final reappraisement the invoice value was sustained.

I claim further that the requirements of the Treasury Department are unreasonable and not warranted by the provisions of the act referred to, the said requirements being impossible of compliance, and the importer must of necessity lose the rights which the statute gives him in this case.

The certificate of the importer made at the time of entry reads:

Importer adds marks 76 to make market value as indicated by appraiser's advances in similar cases now pending on appeal to reappraisement. This addition is made pursuant to section I of section 3, tariff act of October 5, 1913.

The provision of subsection I of section 3, act of 1913, under which relief was sought reads as follows:

The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, and the importer's contention shall subsequently be sustained by a final decision on reappraisement, and it shall appear that the action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, and the Secretary of the Treasury shall accompany his directions with a statement of his conclusions and his reasons therefor.

This salutary provision, which appears for the first time in the act of 1913, was passed to avoid unnecessary litigation in following importations, where a test case was made on the first importation, and to relieve the importer of paying penalties on his subsequent importations after he made a bona fide test of value on the first.

Paragraph I imposes heavy additional duties where merchandise is entered at less than its market value. Previous to the act of 1913 the importer confronted a serious dilemma. On an initial importation the local appraiser advances the value over the entered value. To avoid the additional duties the importer appeals to reappraisement. While that appeal is pending and the question as to what is the market value is still unsettled, the importer makes a second importation of similar merchandise. He does not know at what value to enter the merchandise. If he enters at the value he used on the initial importation, he may incur additional duties. If he enters at the advanced value fixed by the local appraiser on the initial importation, the importer has to pay duties on that value, even though in the earlier case he later sustains his contention by a final decision on reappraisement. In short, by entering at the advanced value he pays more duties than he ought to pay. To relieve this embarrassment

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the new provision in paragraph I was incorporated into the act of 1913. Under that paragraph he may now enter his subsequent importation at the higher value and file therewith his certificate that he had advanced to meet the advance made by the appraiser on the initial importation. By so doing he places himself in a position to get the benefit of the test case. If his contention in the test case be not sustained, he has avoided the additional duties or penalties he would have incurred had he entered his second importation at what he believed to be the market value. If his contention in the test case be sustained, he can obtain relief in the "subsequent" cases by procuring a liquidation at the appraised value found to be correct in the test case, even if less than the entered value. And the ministerial duty is imposed on the Secretary of the Treasury to direct liquidation in the cases following the test case accordingly.

But notwithstanding the statutory requirements have all been followed and the invoiced and entered values in the test case been sustained, and the invoice value in the subsequent appeal likewise has been sustained, the collector has failed to take duty on the invoice value here, but has, as he states in his certificate to the board, taken duty "on the entered value in accordance with departmental letter of March 16, 1915, copy attached to invoice." The letter of the department reads as follows:

TREASURY DEPARTMENT,
Washington, March 16, 1915.

The COLLECTOR OF CUSTOMS,
Philadelphia, Pa.

SIR: The department has to refer to your letter of the 10th ultimo, relative further to an application by John L. Vandiver for a reduction of the entered value, under the provisions of paragraph I of section 3 of the tariff act, of certain toys imported by him for account of Samstag & Hilder, of New York City, on entry No. 20382, on which certain commissions were included in the entered value to meet the action of the appraiser at Baltimore, in adding back similar items of commission which had been deducted by the same importer on entries Nos. 409 and 835, wherein the entered values were sustained on final reappraisement.

At the time of making the advances in question the importer certified as follows:

Importer adds marks 76 to make market value as indicated by appraiser's advances in similar cases now pending on appeal to reappraisement. This addition is made pursuant to section 1 of section 3, tariff act of October 5, 1913.

On final reappraisement the invoiced value was sustained.

The importer states that his action in including the commissions in the entered value was due to information furnished him by the ultimate consignee, to the effect that a similar question of value was then pending on one of their importations under reappraisement appeal.

The department does not regard the action of the importer in making an advance merely because a previous advance has been made by the appraiser and without inquiry on his part as to the true market value, as constituting the good faith and diligence contemplated by the statute. For this reason and also because the importer failed to certify that the entered value was higher than the market value, as required by the statute, the application must be denied.

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The entry, which with all the papers pertaining thereto, is returned herewith, should be liquidated on the basis of the entered value.

Respectfully,

(Signed) F. M. HALSTEAD,
Chief, Division of Customs.

The language of paragraph I above quoted does not read in terms of discretion to the Secretary. The term used is "by direction of the Secretary" when certain things occur, to wit, an advance made in good faith to meet a previous advance in similar cases then pending on appeal to reappraisement, after due diligence and inquiry on the importer's part—that is, after finding that an advance has in fact been made on the same issue, and that there is in fact a pending test appeal, and that the importer is not merely in bad faith (there being no pending advance on the same issue or no test appeal to reappraisement), simply advancing on entry and then by appealing in his own case to get, if he wins, an appraisement and a liquidation below the entered value, and to escape penalties in case he loses the appeal.

That is what the direction is intended to cover. The direction is to be given if all the requirements of the statute are complied with. The departmental letter itself declining to give the direction here shows that the statutory requirements have in fact all been literally complied with. The previous advance, the previous pending appeal upon the importer's own case, the statement on entry that the advance on entry has been made by virtue of this very section of the law. The importer's diligence and good faith are shown by the very existence of these facts upon which he has properly predicated his claim. The department's letter also shows, in addition, that a decision has since been had at the importer's instance in his own previously brought test case, and further, that the importer's appeal to reappraisement in the case at bar, the liquidation of which is here at issue, was decided in his favor and the invoiced value sustained.

If, then, after full compliance with all the provisions of the statute the "direction" to liquidate at the appraised value instead of the entered value can be legally withheld, and no relief granted by the courts in this case, then relief can be refused in every case, and the whole provision of the law becomes a nullity. Again, if the direction is withheld in some cases and made in other cases, the purpose of Congress is just as clearly destroyed.

As the plain intent of the act appears from its explicit language, direction was only to be refused when the statute was not complied with; that is, when some one or more of the requirements not appearing, the importer was attempting in bad faith to use the provision improperly to escape penalties in case he lost on appeal to reappraisement, as before illustrated, where there was no previous advance or test case pending.

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But the provision of the statute is mandatory when the requirements of the statute are all fulfilled. In my opinion the department can not find, as it here does in its ruling declining the direction, that all the necessary facts exist upon which relief is expressly conditioned by the act, and then refuse the direction.

It is true that the department's letter states as grounds for refusal:

(1) Because the importer failed to certify that the entered value was higher than the market value.

The language of the certificate is not, in my opinion, subject to such construction, because the reference to "appraiser's advances in similar cases now pending on appeal to reappraisement" and the reference to the statute where it reads: "This addition is made pursuant to section I of section 3, tariff act of October 5, 1913," can mean but one thing—namely, that he is making the advance above what he considers market value in order to get the advantage of the test case as provided by section I.

Fairly construed the certificate strictly complies with the law.

(2) That it does not appear that the action of the importer on entry was taken in good faith after due diligence and inquiry on his part.

This construction of the state of facts shown by the departmental ruling itself is not warranted, nor can it be imagined what more could be done by the importer to show good faith and due diligence on his part.

It needed no inquiry on the part of the importer to find out what he already knew, namely, that he himself had in good faith made a test case upon the "advance made by the Baltimore appraiser."

What more could he have done than make the test appeal to reappraisement himself and then make advance on entry on his next shipment to meet the advance thus contested, in order to avail himself of the statutory provision here under discussion?

These facts show good faith and an honest compliance with the law upon the importer's part.

In the case of Supervisors *v.* United States (4 Wall., 435, p. 445), Mr. Justice Swayne said:

> The counsel for the respondent insists, with zeal and ability, that the authority thus given involves no duty; that it depends for its exercise wholly upon the judgment of the supervisors, and that judicial action can not control the discretion with which the statute has clothed them. We can not concur in this view of the subject. Great stress is laid by the learned counsel upon the language, "*may, if deemed advisable,*" which accompanies the grant of power, and, as he contends, qualifies it to the extent assumed in his argument. * * *
>
> The conclusion to be deduced from the authorities is, that when power is given to public officers, in the language of the act before us, or in equivalent language—whenever the public interest or individual rights call for its exercise—the language used, though permissive in form, is in fact peremptory. What they are empowered to do for a third person the law requires shall be done. The power is given, not for their

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benefit, but for his. It is placed with the depositary to meet the demands of right and to prevent a failure of justice. It is given as a remedy to those entitled to invoke its aid, and who would otherwise be remediless.

In all such cases it is held that the intent of the legislature, which is the test, was not to devolve a mere discretion, but to impose "a positive and absolute duty."

Section 2984 of the Revised Statutes, authorizing refund of duties for loss by fire in certain cases, is permissive in form. Said section reads as follows:

SEC. 2984. The Secretary of the Treasury is hereby authorized, upon production of satisfactory proof to him of the actual injury or destruction, in whole or in part, of any merchandise, by accidental fire, or other casualty, while the same remained in the custody of the officers of the customs in any public or private warehouse under bond, * * * or while in the custody of the officers of the customs and not in bond, or while within the limits of any port of entry, and before the same have been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, out of any moneys in the Treasury not otherwise appropriated, the amount of impost duties paid or accruing thereupon; and likewise to cancel any warehouse bond or bonds, or enter satisfaction thereon, in whole or in part, as the case may be.

Yet the Supreme Court, in United States *v.* Cornell Steamboat Co. (202 U. S., 184; T. D. 27365), held the language to be mandatory when the facts upon which the statute conditioned such refund were admitted to exist, and sustained a judgment for salvage upon duties collected upon a cargo of sugar saved from loss by fire while in the custody of the Government, stating (p. 192):

It was held by both courts below, and we think properly, that, if the Government were liable to refund these duties in case the property had been destroyed by fire, it was under the same obligation to pay salvage on such duties, as it would have been had property of the Government of the same value been directly saved by the exertions of the salvors.

It is true that the language of section 2984 is permissive, and merely "authorizes" the Secretary of the Treasury to abate or refund duties collected upon merchandise injured or destroyed by accidental fire or other casualty, and does not in terms *require* that this shall be done. We do not find it necessary, however, to go deeply into the learning expended upon the distinction between permissive and mandatory clauses or to determine whether in a particular case mandamus would or would not lie against the Secretary for refusing to refund or abate duties in that connection. D. M. Ferry & Co. *v.* United States (85 Fed., 550). Under the circumstances of this case, as set forth in the petition and agreed findings of fact, we are entitled to assume that the Secretary of the Treasury would have refunded these duties in case of the accidental loss of this sugar by fire, since the authority to do so is found in section 2984, and the money is appropriated for such refunding by section 3689. In a particular case we can imagine that doubts might arise as to the propriety of such refunding, but where a plain case is made in the findings of fact, and is not disputed, it would be an imputation upon the good faith of the Secretary to assume that he would refuse to return the duties notwithstanding the language of the statute may be construed as permissive merely. We think the petitioner is entitled to build his case upon this assumption. Supervisors *v.* United States (4 Wall., 435); Galena *v.* Amy (5 Wall., 704); French *v.* Edwards (13 Wall., 506).

In the case at bar the facts showing compliance with the statute are all admitted in the departmental letter, therefore the Cornell

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Steamboat Co. case is conclusive authority for the proposition that the Secretary was bound in these circumstances to give the "direction" to liquidate below the entered value, and had no "discretion" to refuse.

Relief then being refused in the circumstances above related, and liquidation having been illegally made by the collector upon the entered value instead of the invoiced and appraised value, is there a remedy by protest as here attempted to be invoked by the importer, asking this statutory tribunal created to act as the court of first instance in customs cases to reverse the collector's action and order a reliquidation upon the invoice value found upon reappraisement to be the correct foreign market value?

The collector, following the direction of the department, has liquidated on the entered value, and, unless the provision of subsection I can be thus avoided, has thereby made a liquidation of an erroneous amount of duty in this case. And it is nevertheless the collector's decision although the result of the failure to perform a purely ministerial function devolving upon someone else. As Judge Putnam says in United States *v.* Beebe (122 Fed., 769):

> The United States rest on the words "decision of the collector," found in section 14, and they claim that in the case at bar the "decision" was not that of the collector at Boston, but of the Secretary of the Treasury. This is a narrow construction of the expression, because the ultimate tribunal which reliquidated was not the Secretary but the collector, so that at common law mandamus would lie only against the latter, and not against the former. This position, moreover, begs the question, because, if the action of the Secretary was unlawful, as we hold it was, the collector would rest nothing done by him on that action, and whatever he did was his own.

Consequently, the erroneous decision here made by the collector in levying the wrong amount of duty comes within the express terms of paragraph N of section 3 of the act of 1913, which gives a review before the Board of General Appraisers of every decision of the collector as to the rate and *amount* of duties chargeable upon imported merchandise.

As before stated, if no relief can be obtained from the judicial arm of the Government in such a case as this, then the importer is denied his statutory rights to relief in the circumstances.

The decision which, in my opinion, we are given authority to review is the liquidation made by the collector in levying the wrong amount of duty. Such assessment may come about—

(1) By the collector's own error, as when he classifies merchandise under the wrong paragraph, or assesses a penalty on charges or miscalculates the weight or amount of goods imported, or the like.

(2) Through the error of law committed by some other official precedent to the liquidation, as when the collector liquidates upon the value found upon an illegal appraisement which he must follow blindly because the appraiser's finding conclusively determines the

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per se value and the collector has nothing to do with finding such value. Yet it is only by protest against the purely mechanical act of the collector in liquidating the wrong amount of duty in accordance with such illegal appraisement that the question of its legality can be raised. It is, nevertheless, the collector's decision from which protest lies, although his act was purely mechanical in liquidating on the wrong basis.

(3) Through the failure of performance of some ministerial duty on the part of some other official precedent to liquidation, as in the case at bar, where the collector's act in liquidating, although again purely mechanical, there being no discretion in him except to so mechanically liquidate in the absence of the direction, such situation arising by failure of the Secretary to perform his ministerial duty and to give the direction contemplated by the law. Thus the wrong *amount* of duty comes to be levied by the act of the collector in liquidating said erroneous amount, even if his act in so doing was just as mechanical as when he liquidated an illegal appraisement.

If the statute contemplates relief by protest in the one case, it just as clearly contemplates it in the other.

Granted the premise that this provision of paragraph I imposes a purely ministerial duty upon the Secretary when certain statutory requirements are performed, and the rest follows. Jurisdiction necessarily attaches to correct the wrong amount levied by the collector by reason of the Secretary's nonaction in failing to grant the statutory direction.

This is not a review of a discretion confided to the Secretary, for no such discretion is confided to him, but a ministerial duty alone is imposed upon him to give the direction for the relief contemplated when the statutory requirements are performed.

The record shows, and in my opinion we should hold, that the importer has done everything the statute required him to do to obtain relief.

The direction to give relief has been refused because the department erroneously thinks that something more and beyond the acts which, in my opinion, we should hold, are alone required by the statute, must be done by the importer. Consequently, the collector has in the absence of the direction (thus improperly withheld) assessed duty upon the entered value when the importer was clearly entitled to have the duty assessed upon the invoiced value.

The situation here is somewhat analogous to that where merchandise is admitted to free entry under rules and regulations to be adopted by the Secretary of the Treasury, and the Secretary, let us suppose, makes regulations impossible of performance by the importer, and the collector, being bound to do so, refuses free entry because the regulations are not complied with. Relief would there be

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granted on protest against the collector's mechanical assessment of the wrong amount of duty in obedience to the illegal regulation. The board would clearly have jurisdiction to declare the regulation not warranted by the statute and to give relief accordingly. See G. A. 7668 (T. D. 35086), affirmed in United States *v.* Conkey (6 Ct. Cust. Appls., 487; T. D. 36122).

So, in the case at bar, the protest should be sustained.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

Before Board 2, March 27, 1916.

No. 39445.—Protest 792707 of T. D. Downing Co. (Boston).

Textbooks.—Unbound books entitled "Sense-Plays and Number Plays," imported in sheets, folded and collated, classified as unbound books at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry as textbooks under paragraph 426.

Opinion by Fischer, G. A. It was found that the books are specially intended for the school and nursery, the introduction being prepared with a view to serving as a guide for teachers in schools and kindergartens. They were held entitled to free entry under paragraph 426.

No. 39446.—Protests 790980, etc., of T. D. Downing & Co. (New York).

Textbooks.—Books entitled "Synopsis of Surgery" and "Wheeler & Jack's Medicine," classified at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry as textbooks under paragraph 426.

Opinion by Fischer, G. A. The books in question were found to be medical textbooks intended for and used exclusively by medical colleges. They were held free of duty under paragraph 426.

No. 39447.—Protest 787808 of American Express Co. (New York).

Sprocket Chain Parts.—Sprocket chains and parts thereof, classified at 25 per cent ad valorem under paragraph 126, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by Fischer, G. A. It was found that the merchandise is sprocket chains assembled and unassembled and repair or extra parts of sprocket chains. The chains were held properly classified as sprocket chains under paragraph 126. The repair or extra parts were held dutiable under paragraph 167, as claimed.

No. 39448.—Protest 779146 of W. H. Stiner & Son (New York).

Snap Fasteners, Silver-Plated.—Dress fasteners on tape, composed of cotton and silver-plated metal, classified at 50 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable at 20 per cent under the same paragraph.

Opinion by Fischer, G. A. Protest unsupported; overruled.

No. 39449.—Protest 778166–5852 of G. W. Rueff (New Orleans).

Surface-Coated Paper.—Merchandise invoiced as wrapping paper classified as surface-coated paper suitable for covering boxes, at 40 per cent ad valorem, under

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paragraph 324, tariff act of 1913, is claimed to be used for wrapping purposes and as such dutiable at 25 per cent under the same paragraph.

Opinion by FISCHER, G. A. The paper in question was found to be surface-coated suitable for covering boxes and held properly classified at 40 per cent under paragraph 324.

No. 39450.—Protest 776617 of Baltimore & Ohio Railroad Co. (Baltimore).

PENCIL BOXES OF PAPIER-MÂCHÉ.—Pencil boxes classified as manufactures of papier-mâché at 25 per cent ad valorem under paragraph 369, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by FISCHER, G. A. Protest unsupported; overruled.

No. 39451.—Protest 776285 of L. Straus & Sons (New York).

PLATED WARE.—Metal articles classified as plated with gold or silver at 50 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable at but 20 per cent under the same paragraph.

Opinion by FISCHER, G. A. The articles in question were found to be not plated and held dutiable as manufactures of metal at 20 per cent under paragraph 167, as claimed.

No. 39452.—Protest 776172 of Concordia Publishing House (St. Louis).

BOOKS IN FOREIGN LANGUAGES.—Books classified at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry as books in languages other than English, or as textbooks, under paragraph 426.

Opinion by FISCHER, G. A. It was found that the books are printed chiefly in the German language. They were held entitled to free entry under paragraph 426.

BEFORE BOARD 3, MARCH 27, 1916.

No. 39453.—Protest 783447 of Kennedy & Moon (New York).

STAINED-GLASS WINDOWS.—Certain windows are claimed entitled to free entry as church windows under paragraph 655, tariff act of 1913.

Opinion by WAITE, G. A. On the authority of Perry *v.* United States (6 Ct. Cust. Appls., 201; T. D. 35462) the windows in question were held free of duty under paragraph 655.

No. 39454.—Protest 770842 of Henry May & Co. (Honolulu).

SHORTBREAD—BISCUITS.—Round Scottish shortbread classified by similitude as baked articles containing chocolate, nuts, fruit, or confectionery under paragraph 194, tariff act of 1913, is claimed free of duty as biscuits not specially provided for under paragraph 417.

Opinion by WAITE, G. A. The shortbread in question was found upon analysis not to contain fruits, nuts, or chocolate, but 21.1 per cent of cane sugar and 1.5 per cent of invert sugar. On the authority of United States *v.* Dunlop (6 Ct. Cust. Appls., 278; T. D. 35505), relating to Waverly shortbread, it was held free of duty as biscuits not specially provided for under paragraph 417.

No. 39455.—Protest 793345–58050 of Wakem & McLaughlin (Chicago).

CAPACITY OF BOTTLES.—It is claimed in this case that duty was assessed upon the basis of more than the actual capacity of bottles of whisky.

Opinion by HAY, G. A. Protest overruled, the record showing that a number of bottles measured by the appraiser were found to be of the capacity as returned.

No. 39456.—Protest 793284 of Kronfeld, Saunders & Co. (New York).

SILK WEARING APPAREL IN PART OF BRAID AND NETTING.—Silk wearing apparel made in part of braid and netting, classified under paragraph 358, tariff act of 1913, is claimed dutiable under paragraph 317.

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Opinion by HAY, G. A. On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), certain items were held dutiable under paragraph 317, as claimed.

No. 39457.—Protest 791972 of Thomsen & Co. (New York).

FANS OF TISSUE PAPER.—Fans made of tissue paper, classified as fans under paragraph 349, tariff act of 1913, are claimed dutiable as articles composed of tissue paper under paragraph 323.

Opinion by HAY, G. A. On the authority of Downing *v.* United States (141 Fed., 490; T. D. 26454), the fans in question were held dutiable as articles composed of tissue paper, under paragraph 323, as claimed. United States *v.* Mason (2 Ct. Cust. Appls., 236; T. D. 31957) cited. Protest sustained in part.

No. 39458.—Protest 791371 of Geo. S. Bush & Co. (Seattle).

JOSS STICKS.—Merchandise invoiced as joss sticks or punk, classified as nonenumerated manufactured articles under paragraph 385, tariff act of 1913, is claimed free of duty as joss sticks under paragraph 521.

Opinion by HAY, G. A. The record was found not to bring the commodity in question within the term "joss sticks," as defined in Abstract 36003 (T. D. 34604). Protest overruled.

No. 39459.—Protest 740198 of W. White (Detroit), and protest 779391 of Parker, Wilder & Co., and protest 790126 of Syndicate Trading Co. (New York).

CLERICAL ERROR.—These protests are against the assessment of duty upon the entered and appraised value of the merchandise, the claim being that there was a clerical error in the entry.

Opinions by HAY, G. A. On the authority of United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) and United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485), the protests were overruled. G. A. 7476 (T. D. 33590) cited.

No. 39460.—Protest 789039 of Lawrence Johnson & Co. (New York).

WEIGHT OF CORK LIFE PRESERVERS.—It is claimed that duty was assessed upon excessive weight of cork life preservers due to absorption of sea water.

Opinion by HAY, G. A. No testimony having been offered in support of the claim, protest overruled.

No. 39461.—Protest 784134 of T. G. Reid (Savannah).

BASKET TRAYS.—A china tray within a basket of wood, classified as china under paragraph 80, tariff act of 1913, is claimed dutiable as a composition of wood at 25 per cent under paragraph 175.

Opinion by HAY, G. A. The basket trays in question were held dutiable under paragraph 175, as claimed. Abstract 36466 (T D. 34763) followed.

No. 39462.—Protests 783220, etc., of George Borgfeldt & Co. (New York).

HAPPIFATS—DOLLS.—Kewpie dolls and dolls known as "Happifats," classified as decorated bisque under paragraph 80, tariff act of 1913, are claimed dutiable as dolls under paragraph 342.

Opinion by HAY, G. A. The "Happifats" were held dutiable as dolls under paragraph 342. Abstract 38185 followed. The claim as to the Kewpie dolls having been abandoned, protests overruled as to these items.

No. 39463.—Protest 782392 of Hensel, Bruckmann & Lorbacher and protest 780849 of Merchants' Importing Co. (New York).

PRINTING PAPER—COUNTERVAILING DUTY.—These protests are against the assessment of countervailing duty on certain printing paper under the provisions of paragraph 322, tariff act of 1913.

Opinion by HAY, G. A. Upon stipulation of counsel protests sustained in part.

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No. 39464.—Protest 785374 of Amerman & Patterson (New York).

WOOD PULP—FAVORED NATIONS.—Wood pulp classified under paragraph 406, tariff act of 1909, is claimed free of duty under the favored-nation clause in the existing treaties between the United States and Norway.

Opinion by HAY, G. A. Upon stipulation of counsel the wood pulp in question was held free of duty. American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed.

No. 39465.—Protest 773925 of Morimura Bros. (New York).

DECORATED EARTHENWARE.—Certain articles of decorated earthenware classified at 55 per cent ad valorem under paragraph 80, tariff act of 1913, are claimed dutiable at 40 per cent under paragraph 79.

Opinion by HAY, G. A. Upon the admission on behalf of the Government that a mistake was made in the classification of this merchandise, it was held dutiable under paragraph 79, as claimed.

No. 39466.—Protests 766219, etc., of Morimura Bros. (Seattle and San Francisco).

SMOKERS' ARTICLES.—Humidores, ash trays, smokers' sets, match stands, and other articles of decorated china classified under paragraph 80, tariff act of 1913, are claimed dutiable as smokers' articles under paragraph 381.

Opinion by HAY, G. A. Certain of the articles in question were held dutiable as smokers' articles under paragraph 381, as claimed. Abstract 37798 and Abstract 29853 (T. D. 32842) followed.

No. 39467.—Protests 765804, etc., of Husselrath Importing Co. (New York).

PIASSAVA—VEGETABLE FIBER.—Piassava or other vegetable fiber classified as tampico, by similitude, at 20 per cent ad valorem under paragraph 285, tariff act of 1913, is claimed dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385.

Opinion by HAY, G. A. Upon stipulation of counsel that the merchandise is the same as that passed upon in Cone *v.* United States (6 Ct. Cust. Appls., 263; T. D. 35477), it was held dutiable as a nonenumerated manufactured article under paragraph 385.

No. 39468.—Protests 253153, etc., of Felix Salomon & Co. (New York).

RAGS—GUNNY BAGGING.—Scrap gunny bagging in small fragments, full of holes, dirty, and irregular in size, classified under paragraph 463, tariff act of 1897, is claimed entitled to free entry as rags under paragraph 648.

Opinion by HAY, G. A. On the authority of G. A. 6603 (T. D. 28202) the merchandise in question was held free of duty as rags under paragraph 648.

No. 39469.—Protest 792541-6546 of Westfeldt Bros. (New Orleans).

ENTERED VALUE—PRO FORMA INVOICE.—In this case entry was made on a pro forma invoice. The appraiser found the value to be the same as that given in the consular invoice, which was lower than the entered value. The collector assessed duty upon the entered value in accordance with the provisions of paragraph I of section 3, tariff act of 1913.

Opinion by HAY, G. A. On the authority of United States *v.* Bennett (2 Ct. Cust. Appls., 249; T. D. 31975) protest overruled.

No. 39470.—Protest 790393 of Becker-Hazleton Co. (Des Moines).

VALUE.—It is claimed in this protest that duty was assessed upon excessive value of certain earthenware.

Opinion by HAY, G. A. Protest dismissed.

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BEFORE BOARD 1, MARCH 29, 1916.

No. 39471.—Protests 762536, etc., of Ayres, Bridges & Co. et al. (New York).

FUR SKINS.—Merchandise classified as furs dressed on the skin and fur articles or fur material in a variety of shapes and conditions, at different rates under paragraph 348, tariff act of 1913, is claimed dutiable at rates other than those assessed or entitled to free entry.

Opinion by McCLELLAND, G. A. Skins dealt in and used by fur dealers and manufacturers of articles wholly or in chief value of fur were held properly classified under paragraph 348. United States v. Heckman (1 Ct. Cust. Appls., 272; T. D. 31318), Gross v. United States (1 Ct. Cust. Appls., 321; T. D. 31410), Revillon v. United States (2 Ct. Cust. Appls., 209; T. D. 31948), United States v. Bennet (66 Fed., 299), Abstract 36657 (T. D. 34824)) and Abstract 37687 followed. No proof having been offered in support of the claims as to the fur articles or fur materials, the protests were overruled as to them also.

No. 39472.—Protest 794158 of G. M. Thurnauer Co. (New York).

BELLOWS.—Small bellows classified as manufactures of leather at 30 per cent ad valorem under paragraph 360, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167, or as manufactures of wood at 15 per cent under paragraph 176.

Opinion by McCLELLAND, G. A. It was found upon analysis that the bellows are composed in chief value of wood. They were held dutiable under paragraph 176, as claimed. Abstract 38649 followed.

No. 39473.—Protest 798154 of W. L. Montgomery & Co. (Boston).

CUTCH.—Merchandise invoiced as "100 boxes cutch," classified as dyewood extract at three-eighths of 1 cent per pound under paragraph 30, tariff act of 1913, is claimed free of duty, without citing any paragraph of the law.

Opinion by McCLELLAND, G. A. Protest unsupported; overruled.

No. 39474.—Protests 776068, etc., of Fritzsche Bros. (New York).

EUCALYPTOL.—Merchandise invoiced as eucalyptol, classified as essential oil at 20 per cent ad valorem under paragraph 46, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 5.

Opinion by McCLELLAND, G. A. Upon stipulation of counsel that the merchandise is the same as that covered by Abstract 38963, it was held dutiable under paragraph 5.

No. 39475.—Protests 763405, etc., of Redden & Martin (New York).

WOOL OLEINE—OILS.—Merchandise classified as distilled oils at 20 per cent ad valorem under paragraph 46, tariff act of 1913, and as acid at 15 per cent under paragraph 1, invoiced as "wool oleine" and "oleine, about 40 to 45 per cent saponifiable," is claimed free of duty under paragraph 498 as leather dressing oil.

Opinion by McCLELLAND, G. A. The commodities in question are used to mix with other oils to manufacture an oil for stuffing or dressing leather, and also for making soap. They were held free of duty under paragraph 498. G. A. 7812 (T. D. 35894) and G. A. 7870 (T. D. 36218) followed.

No. 39476.—Protest 793395 of Pratt & Farmer Co. (New York).

DRESS FASTENERS, SILVER-PLATED.—Hooks and eyes and dress or snap fasteners attached to cards, classified as metal collar buttons at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal, not plated with gold or silver, at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. From the report of the analyst it was found that the goods in question are silver plated. Protest overruled without affirming the action of the collector.

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No. 39477.—Protest 756969-53492 of Marshall Field & Co. (Chicago).

BRACELETS—JEWELRY.—A glass or china bracelet in imitation of jade and a goldstone eardrop attached to a bell-like piece of base metal, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as articles of glass at 45 per cent under paragraph 84, or as manufactures of glass at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. No proof was offered as to the material of which the articles are composed. Protest overruled. Mamluck *v.* United States (6 Ct. Cust. Appls., —; T. D. 36198) cited.

No. 39478.—Protests 765841-54917, etc., of Sears, Roebuck & Co. (Chicago).

COMPASSES.—Pocket compasses in chief value of brass, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The compasses in question are about 1½ inches in diameter, similar to those the subject of G. A. 7824 (T. D. 35949). They were held dutiable under paragraph 167, as claimed.

No. 39479.—Protest 767377 of Manhattan Bead Chain Co. (New York).

BRASS SPRING RINGS—PARTS OF JEWELRY.—Spring rings made of brass used for making jewelry and chains, classified as parts of jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under the last clause of said paragraph.

Opinion by SULLIVAN, G. A. On the authority of Mamluck *v.* United States (6 Ct. Cust. Appls., —; T. D. 36198) the articles in question, being material of metal suitable for use in the manufacture of jewelry and chains, were held dutiable at 50 per cent under paragraph 356, as claimed.

No. 39480.—Protest 778453 of E. Fougera & Co. (New York).

GLYCERIN, REFINED.—Refined glycerin put up in packages of less than 2½ pounds gross weight, classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable at 2 cents per pound under paragraph 35.

Opinion by BROWN, G. A. On the authority of G. A. 7833 (T. D. 36031) the glycerin in question was held properly classified under paragraph 17.

No. 39481.—Protest 766424 of Naday & Fleischer (New York).

WOOL PILE FABRICS.—Merchandise classified as wool pile fabrics at 40 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as wool cloth at 35 per cent under the same paragraph, or as wool dress goods under paragraph 290.

Opinion by BROWN, G. A. Protest unsupported; overruled.

BEFORE BOARD 2, MARCH 29, 1916.

No. 39482.—Protest 776939 of Harry Falck (New York).

ALUMINUM, MANUFACTURES OF.—The appraiser reports the merchandise in question, invoiced as aluminum sheets, consists of aluminum cut to special sizes for particular uses. It was classified as manufactures of aluminum at 20 per cent ad valorem under paragraph 167, tariff act of 1913, and is claimed dutiable as aluminum in sheets at 3½ cents per pound under paragraph 143.

Opinion by FISCHER, G. A. It was found that the aluminum in question is in the form of flat pieces cut to specific dimensions. It was held properly classified as manufactures of aluminum under paragraph 167. Universal Shipping Co. *v.* United States (4 Ct. Cust. Appls., 245; T. D. 33479) and Guiterman *v.* United States (5 Ct. Cust. Appls., 514; T. D. 35155) followed.

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No. 39483.—Protest 771968 of Wyman, Partridge & Co. (Minneapolis).

TURKISH TOWELS—PILE FABRICS.—Turkish towels classified as pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable as cotton towels at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. The towels in question are held dutiable under paragraph 264. G. A. 7656 (T. D. 35019) followed.

BEFORE BOARD 2, MARCH 31, 1916.

No. 39484.—Protests 772185, etc., of Geo. Nash Co. (New York).

STEEL STRIPS.—Articles returned by the appraiser as steel sheets, cold rolled, classified at 15 per cent ad valorem under paragraph 109, tariff act of 1913, are claimed dutiable as strips of steel at 12 per cent under paragraph 105.

Opinion by FISCHER, G. A. It was found that the merchandise consists of cold rolled high carbon steel strips, 5¼ inches in width, one-eighth of 1 inch in thickness, and 6 feet in length, similar to those passed upon in Abstract 38227. They were held dutiable under paragraph 105, as claimed. Protests sustained in part.

No. 39485.—Protests 773648, etc., of Mallinckrodt Chemical Works (St. Louis).

IRON DRUMS.—Iron drums imported filled with binoxide of barium, classified at 20 per cent ad valorem under paragraph 127, tariff act of 1913, are claimed entitled to free entry as the usual containers of merchandise subject to specific duty.

Opinion by FISCHER, G. A. It was found that the drums in question are intact after the removal of their contents and in no sense mutilated or destroyed. They were held properly classified under paragraph 127. United States *v.* Bene (6 Ct. Cust. Appls., —; T. D. 36145) followed.

No. 39486.—Protests 790997, etc., of W. E. Huguenin et al., protests 784942, etc., of Ad. Schwob et al., and protests 786316, etc., of Byron L. Strasburger & Co. (New York).

TIMERS.—Timers specially designed for timing horse races and other speed contests, and for use by physicians in timing the heart and pulse beats, classified as watches at 30 per cent ad valorem under paragraph 161, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinions by FISCHER, G. A. The timers in question were held dutiable under paragraph 167, as claimed. G. A. 7730 (T. D. 35460) and G. A. 7827 (T. D. 35791) followed.

No. 39487.—Protest 791937 of Overton & Co. (New York).

WARP MACHINERY.—Merchandise invoiced as warp machinery and classified at 25 per cent ad valorem under paragraph 165, tariff act of 1913, is claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. It was found that the article in its imported condition is not a machine capable of making nets or nettings. It was held dutiable under paragraph 167, as claimed.

No. 39488.—Protest 794626 of J. Wilckes Co. (New York).

BEET-KNIFE SHARPENERS.—Circular steel files known as "fraises," used to sharpen the knives and blades of beet-slicing machines, classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed free of duty under the provision in paragraph 391 for machinery for use in the manufacture of sugar.

Opinion by FISCHER, G. A. On the authority of United States *v.* American Express Co. (6 Ct. Cust. Appls., —; T. D. 36124), affirming G. A. 7687 (T. D. 35141), the beet-knife sharpeners in question were held entitled to free entry under paragraph 391, as claimed.

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BEFORE BOARD 3, MARCH 31, 1916.

No. 39489.—Protest 784934 of McHutchison & Co. (New York).

PHLOX—HERBACEOUS PLANTS—NURSERY STOCK.—The appraiser describes the merchandise in question as phlox or other herbaceous plants with fasciculated non-bulbous roots. It was classified as nursery stock at 15 per cent ad valorem under paragraph 211, tariff act of 1913, and is claimed dutiable at 50 cents per thousand under paragraph 210.

Opinion by WAITE, G. A. The merchandise in question was found to be roots of herbaceous plants grown for outside decoration, principally for their flowers, and are of the same character as those passed upon in Abstract 37844. They were held dutiable under paragraph 210, as claimed. Protest sustained in part.

REHEARINGS GRANTED.

MARCH 10, 1916.

No. 39490.—JACQUARDS, FIGURED.—Protests 763490, etc., of Knauth, Nachod & Kuhne. Abstract 39290.

MARCH 17, 1916.

No. 39491.—JACQUARDS, FIGURED.—Protest 787767 of Dezell & Helwig. Abstract 39318.

MARCH 28, 1916.

No. 39492.—PHOTOGRAPH MOUNTS OR HOLDERS.—Protests 764091, etc., of George Hirschfeld. G. A. 7863 (T. D. 36191).

TREASURY DEPARTMENT, *April 3, 1916.*

The appended decision of the United States Circuit Court of Appeals for the Third District is published for the information of officers of the customs and others concerned.

(98940.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 36281.)

Parcel-post packages—Forfeiture.

Parcel-post packages subject to forfeiture for violation of subsection 9, section 28, act of August 5, 1909.

UNITED STATES OF AMERICA, Appellant, *v.* EIGHTEEN PACKAGES OF DENTAL INSTRUMENTS (SAMUEL RUBIN, CLAIMANT), Appellee.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

APPEAL from the District Court of the United States for the Eastern District of Pennsylvania.

Before BUFFINGTON, MCPHERSON, and WOOLEY, Circuit Judges.

BUFFINGTON, *Judge:* Generally speaking, this case involves two questions. Stated in a general way, the first is whether fraudulent importations by parcel post are subject to the same forfeitures as customhouse deliveries, or, stated specifically, "whether a libel for forfeiture which does not aver a formal entry and subsequent customhouse proceedings, but which sets forth in detail an attempt on the part of the consignor to

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introduce into the commerce of the United States, by parcel post, certain merchandise by means of fraudulent and false invoices, by means whereof the United States would have been deprived of its lawful duties on such merchandise is insufficient under subsection 9 of section 28 of the act of August 5, 1909."

Stated in a general way, the second question is whether the parcel-post convention of 1899 made by this Government with Germany exempts parcel-post importations from the forfeiture provided by a subsequent act of Congress, or, stated specifically, "whether subsection 9 of section 28 of the act of August 5, 1909, providing, *inter alia*, for the forfeiture of merchandise if the consignor shall attempt to introduce it into the commerce of the United States by means of fraudulent or false invoices, by means whereof the United States may be deprived of any portion of its lawful duties, applied to merchandise mailed from Germany to the United States under the parcel-post convention of September 2, 1899."

The cause arose on a libel filed by the Government to forfeit certain packages of dental instruments sent by parcel post from Germany to Philadelphia. Exceptions to the libel were filed by the claimant. Simply as a matter of administration, it might perhaps have been better to overrule the exceptions without prejudice to the claimant's right to renew them in any appropriate form after a trial had settled such questions of fact as might turn out to be in dispute. In this way the whole controversy would have been disposed of more speedily, and the possibility of a second appeal avoided. But, no doubt for reasons that seemed good and controlling, the court below preferred to decide the case solely upon the exceptions. As we are obliged to differ from its conclusion the case must go back, and therefore may reach us again on a second appeal.

The exceptions to this libel having been sustained by the court below, the libel was dismissed. Whereupon the Government took this appeal. As amended the libel averred—and for the purposes of this cause we must assume them true—that in April and May, 1913, Edwin Hager consigned by parcel post from Dusseldorf, Germany, 18 packages of dental instruments addressed to Samuel Rubin, Philadelphia, Pa.; that invoices were mailed with the several packages, which made untrue and fictitious statements as to the values of the instruments, such values being the alleged prices at which the instruments were purported to have been sold; that the values thus alleged were $187.02 less than the true dutiable values of the instruments; that Hager sent to Rubin "* * * invoices in which the values of the said merchandise was stated correctly and truly; that in addition to the false invoices marked, as aforesaid, with the said packages, Hager mailed duplicates of said invoices directly to said Samuel Rubin."

The libel further averred that Hager "* * * did fraudulently and knowingly, as consignor, attempt to enter and introduce into the commerce of the United States, to wit, by parcel post, at the port of Philadelphia, in the State of Pennsylvania, the said dental instruments, by means of fraudulent and false invoices, to wit, by invoices which then and there contained untrue and fictitious statements as to foreign market and true dutiable values, and by means of which the United States would be deprived of a portion of the lawful duties accruing upon the said dental instruments."

It is conceded that if such goods had entered the United States in due course through the usual customhouse channels they would have been subject to forfeiture under the provisions of subsection 9 of section 28 of the act of August 5, 1909 (36 Stat., 97), quoted below:

> That if any consignor, seller, owner, importer, consignee, agent, or other person or persons shall enter or introduce, or attempt to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, affidavit, paper, letter, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties or any portion thereof accruing upon the merchan-

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dise or any portion thereof embraced or referred to in such invoice, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise or the value thereof to be recovered from such person or persons shall be forfeited, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraudulent or false paper or statement relates; and such person or persons shall, upon conviction, be fined for each offense a sum not exceeding $5,000 or be imprisoned for a time not exceeding two years, or both, in the discretion of the court.

It is contended, however, that this section relates only to customhouse entries and not to parcel post. At this point we note that the statutory forfeiture on which this libel is based is an attempt by the consignor to fraudulently introduce merchandise into the commerce of the United States. It is true the libel points out—as in fairness it should for the information of the consignee—certain steps the consignor took. But these facts are not the statutory cause of forfeiture but incidents or evidence to establish that the consignor was guilty of the forfeiture act, which was a fraudulent attempt to introduce merchandise into the commerce of the United States. It is also to be noted that an attempt by a consignor to fraudulently introduce into commerce was a new cause of forfeiture, which was only made such by the act of 1909.

As showing the wider scope and effect of that act to stop the fraudulent importation possible under earlier tariff laws, it suffices to quote what the Supreme Court said in United States *v.* 25 Packages of Hats (231 U. S., 360):

The prior tariff act (26 Stat., 131) provided for the forfeiture of goods "if any owner, importer, consignee, agent, or other person shall make or attempt to make any entry of imported merchandise by means of any fraudulent or false invoice." In several cases arising under that act it was held that the language used did not cover the case of fraud by the consignor, nor could the goods be forfeited for the wrongful conduct of any person if the act preceded the making of the documents or taking any of the steps necessary to enter the goods. United States *v.* 646 Half Boxes of Figs (164 Fed., 778, 1908); United States *v.* One Trunk (171 Fed., 772, July, 1909). Under the statute, as thus construed, there was no penalty for the grossest fraud on the part of the consignor, notwithstanding the fact that his invoice valuation was of great importance in determining true values, as a basis for collecting the duty. And even if the consignor was also consignee it had been held that there was a *locus penitentiæ*, so that he might, before entry, substitute a true for a false invoice, and thus escape a forfeiture.

In order to close these loopholes and to make the act more effective Congress, on August 5, 1909 (36 Stat., 11, 97), changed the law so as to increase the number of persons whose fraud should be punished. It also enlarged the scope of conduct for which the goods should be forfeited. Instead of punishing only for the fraud of the "owner, importer, consignee, and other persons," as under the act of 1890, provision was made for forfeiture for fraud of the "consignor or seller." Instead of punishing only for entering or attempting to enter on a fraudulent invoice, it punished an attempt by means "to introduce any imported merchandise into the commerce of the United States." This latter phrase necessarily included more than an attempt to enter, otherwise the amendment was inoperative against the consignor, against whom it was specially aimed, for he does not, as such, make the declaration, sign the documents, or take any steps in entering or attempting to enter the goods. When he makes the false invoice in a foreign country there is no extraterritorial operation of the statute whereby he can be criminally punished for his fraud. But when the consignor made the fraudulent undervaluation in the foreign country, and on such false invoice the goods were shipped and arrived consigned to a merchant in New York, the merchandise was within the protection and subject to the penalties of the commercial regulations of this country even though the consignor was beyond the seas and outside the court's jurisdiction.

It was argued that the goods could only be forfeited for the same acts that would support an indictment, and inasmuch as the consignor could not be prosecuted here for making a false invoice in a foreign country, neither could the goods be forfeited for the same conduct in the same place. But while punishment for the crime and forfeiture of the goods will often be coincident penalties, they are not necessarily so, nor is there any inconsistency in proceeding against the *res* if the wrongdoer is beyond the jurisdiction of the court. The very fact that the criminal provision of the statute does not operate extraterritorially against the consignor, would be a reason why the goods themselves should be subjected to forfeiture on arrival here.

Seeing, then, that the statutory forfeiture in this libel is what Hager, the consignor, and not what Rubin, the consignee, did, it necessarily follows that when the goods,

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fraudulently undervalued and consigned by Hager, arrived at Philadelphia, the port of entry, there was then, to use the language of the Supreme Court quoted above, "an attempt to introduce them into the commerce of the United States." What course the goods thereafter followed, whether Rubin received them through the customs office or through the post office, in no way affected Hager or the forfeiture to which his conduct had already subjected the attempted importation. If Rubin never claimed or received the goods, they could have been forfeited just the same for Hager's fraudulent attempt. Indeed, it is conceded that if the goods had been consigned through customhouse channels, they could have been subjected to the statutory forfeiture imposed by the section quoted of the act of 1909. But to our mind, there is no more reason for applying that section to customhouse than there is to post-office importations. Neither one of these Government agencies are mentioned in the section. The loss of duties by the Government is the same whether the fraudulent attempt is affected by entry through either channel. Moreover, there is no reason why the Government should limit such dutiable importations to its customhouse when it has extended its mail facilities to carrying merchandise parcels. The fact that this statute does not mention customhouses shows that no limitation was intended, and the statute's inclusive character is indicated by the provisions that it applies to "*any consignor*, seller, owner, importer, consignee, agent, or other person"; that it covers any attempt to introduce "into the commerce of the United States *any* imported merchandise"; that the fraudulent attempt to introduce may be done "by means of *any* false statement, written or verbal"; or "by means of any false or fraudulent practice or appliance whatsoever"; or when the person offending "shall be guilty of *any* willful act or omission by means whereof the United States shall or may be deprived of the lawful duties, or any portion thereof." Deprivation of duties is the mischief sought to be remedied, and forfeiture for an attempt to fraudulently introduce into commerce is the punitive remedy provided. Indeed, as it seems to us, there is no reason why the United States should restrict this statutory self-protective statute to customhouse entries, and there is every reason why it should cover the post-office system. The extension of the parcel post evidenced a governmental purpose to make its mail system an agency and its post office a place for merchandise delivery. And if the facilities of the post-office system are extended by law to consignments of domestic merchandise and by treaty to foreign merchandise, there is no reason why, with the benefit conferred, there should not be imposed such statutory regulations as will prevent post-office as well as customhouse facilities from being used to defraud the Government of the duties which it has imposed on all foreign merchandise introduced into the commerce of the country.

When the act of 1909 was passed the Government had already by its practices and regulations adopted the post office as a recognized agency for the importation of foreign merchandise. For example, article 775 of the Treasury Regulations of 1908 provides:

> Dutiable articles are admitted to the mails exchanged under the various parcel-post conventions on the following conditions, viz: "The parcels must be so wrapped or inclosed as to permit their contents to be easily examined by customs officers and postmasters duly authorized to do so; the customs declarations provided for by the conventions must contain accurate statements of the contents and value of parcels, and be securely attached thereto; the parcels to be subject in the country of destination to customs duties, and to the regulations in force for the protection of the customs revenue, and must conform to the following conditions as to value, weight," etc.

Other regulations are referred to in the opinion of the court below, where it is said:

> Customs officers are detailed for service at the post offices and meet the mails on arrival. By T. D. 21698, in 1899 such officers were required to correct the valuations when inadequate or supply them when omitted. Forms for this purpose are provided. Article 775 of the Customs Regulations of 1908 required accurate statements of contents and valuations. Article 815 exempted goods from seizure for undervaluations unless the packages contained cigars or cigarettes. Subsequently, formal entry was

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required in certain cases. In 1909 parcels were limited to a value of $80 and entry required where the foreign market value exceeded that stated by more than 25 per cent, or where the value exceeds $100.

Our answer to the first question must therefore be that the averments in the libel were sufficient.

We turn next to the second question. The postal convention with Germany was made in 1899. The act in question was passed in 1909. It is settled, Horner *v.* United States (143 U. S., 570), that a statute equally with a treaty is a law, and if subsequent to and conflicting with the treaty, supersedes it. But in this case there is no necessity for invoking that principle, for there is nothing in the treaty which in any way limits the power of either country to enact its own tariff legislation. On the contrary, the treaty evidences the desire of each country sending merchandise by post to subject it to the customs regulations of the other. For example, Article II, after providing for the receipt of merchandise packages, provides it "must be wrapped or inclosed so as to permit their contents to be easily examined by customs officers and by postmasters duly authorized to do so." And Article IV says:

> The packages in question shall be subject in the country of destination to all customs duties and all customs regulations in force in that country for the protection of its customs revenues.

And Article V provides:

> The sender of each package must take a customs declaration, upon a special form provided for the purpose (see Form 1A, annexed hereto), giving the address, a general description of the parcel, an accurate statement of the contents and value, date of mailing, and the sender's signature and place of residence; which declaration must accompany the parcel to destination.

This view—namely, that each signatory to this postal convention was in no way to control the customs regulations of the other—is in accord with the subsequent practice of the signatories thereto. Such practice is evidenced by the instructions issued by our Post Office Department (United States Postal Official Guide, July 1915, p. 99), which provides:

> The department has not been advised what articles (other than those so designated in the preceding list of "prohibited articles") are liable to customs duties in foreign countries, and consequently does not exclude articles of merchandise from the regular mails for foreign countries because they may be liable to customs duties in the countries to which they are addressed. They are accepted at the sender's risk. Any country may refuse to deliver dutiable articles received in mails from other countries, and may dispose of them in accordance with the customs regulations of that country.
>
> The question whether or not an article sent by mail from one country to another is subject to customs duty in the latter country can be decided only by the country to which the article is sent, and is not affected by any postal convention between said countries. This department is not authorized to question the decision of foreign officials in such matters any more than foreign officials would be authorized to question the decisions of United States officials respecting the liability to United States customs duty of an article received here in mails from abroad.

It follows, therefore, that the second question must be answered in the affirmative, namely, that section 9 of the act of 1909 applies to merchandise mailed from Germany to the United States under the postal convention of 1899 between these countries. Such being the case, it follows the court erred is sustaining the exceptions and dismissing the libel. Its decree will therefore be vacated, the libel reinstated, and the cause remanded for further procedure.

(T. D. 36282.)

Memorandum of decisions, Court of Customs Appeals.

[Omitted from this edition.]

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(T. D. 36283.)

Drawback on gas mantles.

Drawback on gas mantles manufactured by the General Gas Mantle Co., of New York, N. Y., and Philadelphia, Pa., with the use of imported thorium nitrate or thorium nitrate produced from imported monazite sand.—T. D. 30965 of October 3, 1910, revoked.

TREASURY DEPARTMENT, *April 4, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on gas mantles manufactured by the General Gas Mantle Co., of New York, N. Y., and Philadelphia, Pa., with the use of imported thorium nitrate or thorium nitrate produced from imported monazite sand covered by drawback rates now existing or which may be promulgated in the future.

The quantity of thorium nitrate which may be taken as the basis for the allowance of drawback shall not exceed the quantity appearing in the exported gas mantles, as shown by the sworn statement of the manufacturers, dated February 25, 1916, transmitted herewith, or supplemental sworn statements which may be filed and verified.

T. D. 30965 of October 3, 1910, is hereby revoked.

Respectfully, WM. P. MALBURN,
(104258.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36284.)

Drawback on medicinal preparations.

Drawback on medicinal preparations manufactured by the Lydia E. Pinkham Medicine Co., of Lynn, Mass., with the use of domestic tax-paid alcohol.—T. D. 30018 of September 30, 1909, revoked.

TREASURY DEPARTMENT, *April 4, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on medicinal preparations designated as "Blood Medicine and Vegetable Compound," manufactured by the Lydia E. Pinkham Medicine Co., of Lynn, Mass., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported medicinal preparations, with a maximum of the quantity shown in the sworn statement of the manufacturers, dated March 14, 1916, which is transmitted herewith for filing in your office.

T. D. 30018 of September 30, 1909, is hereby revoked.

Respectfully, WM. P. MALBURN,
(67936.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36285.)

Drawback on condensed milk.

Drawback on condensed milk manufactured by M. Darlington's Sons, of Doe Run. Pa., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *April 5, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on condensed milk manufactured by M. Darlington's Sons, of Doe Run, Pa., with the use of refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept, which will show, in the case of each lot of condensed milk manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of refined sugar and the quantity and character of milk used, and the quantity and brand name of the condensed milk obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported condensed milk, with a maximum of the quantity used in its manufacture, as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated March 21, 1916, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(103025-3.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(D. T. 36286.)

Drawback on paint oil.

Drawback on paint oil manufactured by the Petroleum Products Co., of New York, N. Y., with the use of linseed oil produced from imported seed.

TREASURY DEPARTMENT, *April 5, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on "paint oil" manufactured by the Petroleum Products Co., of New York, N. Y., with the use of linseed oil produced from imported seed.

A manufacturing record shall be kept, which will show, in the case of each lot of paint oil manufactured for exportation with benefit of

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drawback, the lot number and date of manufacture thereof, the quantity of paint oil produced, and the quantity and identity of the linseed oil appearing therein. A sworn statement from such manufacturing record shall be filed with the drawback entry.

The quantity of linseed oil which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported paint oil, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated March 17, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on paint oil exported on or after February 25, 1916.

Respectfully, WM. P. MALBURN,
(104575.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36287.)

Drawback on Sozodont.

Drawback on Sozodont manufactured by Hall & Ruckel, of New York, N. Y., with the use of domestic tax-paid alcohol, and on containers of Sozodont manufactured by the said company with the use of imported sprinkler tops and corks.—T. D. 16910 of March 17, 1896, T. D. 22959 of April 15, 1901, T. D. 29954 of August 19, 1909, and T. D. 30623 of May 20, 1910, revoked.

TREASURY DEPARTMENT, *April 5, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on Sozodont, manufactured by Hall & Ruckel, of New York, N. Y., with the use of domestic tax-paid alcohol and on containers of Sozodont manufactured by the said company with the use of imported sprinkler tops and corks.

A manufacturing record shall be kept, which will show, in the case of each batch of Sozodont manufactured for exportation with benefit of drawback, the batch number and date of manufacture thereof, the quantity, proof, and identity of domestic tax-paid alcohol used, and the quantity of Sozodont obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported Sozodont, as shown by the abstract from the manufacturing record, one imported sprinkler top and cork of the size used for each bottle of Sozodont exported, the quantity of imported cork appearing in the containers, as shown by the sworn statement of the manufacturers, dated March 15, 1916,

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and the sworn statement of L. Mundet & Son (Inc.), dated March 13, 1916, which are transmitted herewith for filing in your office.

T. D. 16910 of March 17, 1896, T. D. 22959 of April 15, 1901, T. D. 29954 of August 19, 1909, and T. D. 30623 of May 20, 1910, are hereby revoked.

Respectfully, WM. P. MALBURN,
(72658.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36288.)

Drawback on signs.

Drawback on celluloid and metal mounted signs manufactured by the General Advertising Co., of Reading, Pa., with the use of imported printed display signs.

TREASURY DEPARTMENT, *April 5, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on celluloid and metal mounted signs manufactured by the General Advertising Co., of Reading, Pa., with the use of imported display signs.

The allowance shall not exceed one imported printed display sign for each celluloid and metal mounted sign exported.

The sworn statement of the manufacturers, dated March 20, 1916, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(104417.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 36289.)

Drawback on dyes and other coal-tar preparations.

Drawback on dyes and other coal-tar preparations manufactured by the Geigy-ter Meer Co., of New York, N. Y., with the use of imported coal-tar products.—T. D. 24108 of December 17, 1902, revoked.

TREASURY DEPARTMENT, *April 6, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on dyes and other coal-tar preparations manufactured by the Geigy-ter Meer Co., of New York, N. Y., with the use of imported coal-tar products or with the use of such imported materials in combination with domestic materials.

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A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated March 15, 1916, transmitted herewith, which will show, in the case of each lot of coal-tar preparation manufactured for exportation with benefit of drawback, the lot number, date of manufacture thereof, the quantity and kind of preparation produced, the quantity, character, and identity of the imported materials, and the quantity of domestic materials appearing therein. A sworn abstract from snch manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantities of imported materials appearing in the exported coal-tar preparation as shown by the abstract from the manufacturing record.

T. D. 24108 of December 17, 1902, is hereby revoked.

Respectfully, WM. P. MALBURN,
(104911.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36290.)

Payment of Government warrants and checks.

[Circular No. 5—Second edition.][1]

TREASURY DEPARTMENT, *April 6, 1916.*

To the Treasurer and assistant treasurers of the United States, Federal reserve banks, active national-bank depositaries, Treasury of the Philippine Islands, disbursing officers of the United States, and others concerned:

All Government receipts shall be deposited with the Treasurer of the United States, assistant treasurers of the United States, Federal reserve banks, national-bank depositaries, and the Treasury of the Philippine Islands. Disbursements shall be made by warrants or checks drawn on the Treasurer of the United States and finally paid by him, but such warrants and checks may be cashed by the assistant treasurers of the United States, the Federal reserve banks, national-bank depositaries, and the Treasury of the Philippine Islands, in accordance with the following regulations:

1. Deposits of revenue and repayments to appropriations shall be made with the Treasurer of the United States direct or for his credit with the assistant treasurers of the United States, Federal reserve banks, active national-bank depositaries, and the Treasury of the Philippine Islands in accordance with existing regulations, and the original certificates of deposit issued therefor shall be listed in and

[1] The first edition of this Circular No. 5 was issued January 9, 1913, from the Office of the Treasurer of the United States. It is entirely superseded by this edition.

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forwarded with the daily transcripts of account with the Treasurer of the United States, Form 17.

2. All funds advanced to Government disbursing officers for disbursement will be placed to their credit, subject to their official check, with the Treasurer of the United States in Washington, except as provided in paragraphs 9 and 10.

3. When a disbursing officer desires to place funds in his possession with the Treasurer of the United States, subject to his official check, he shall make the deposit, accompanied by Form 6599, with the Treasurer direct, or with an assistant treasurer of the United States, a Federal reserve bank, an active national-bank depositary, or the Treasury of the Philippine Islands. The depositary shall receipt for such deposits in duplicate under the date the deposit is received, deliver the duplicate receipt to the depositor, list the original in its daily transcript of account with the Treasurer, Form 17, and forward it therewith, except as provided in paragraphs 9 and 10.

4. All Government warrants and checks shall be drawn on the Treasurer of the United States, except as provided in paragraphs 9 and 10.

5. Each Federal reserve bank, each active national-bank depositary, the Treasury of the Philippine Islands, and each assistant treasurer of the United States will cash Government warrants and checks drawn on the Treasurer of the United States when they are presented and properly indorsed by responsible holders who guarantee all prior indorsements thereon, including the indorsement of the drawer when the check is drawn in his favor. Warrants and checks so cashed shall be charged to the account of the Treasurer of the United States by the bank, Treasury of the Philippine Islands, or assistant treasurer cashing the same. The Treasurer will reserve the usual right of the drawee to examine all warrants and checks when received and to refuse final payment thereon.

6. Warrants and checks dated prior to February 1, 1913, will be cashed by the assistant treasurer or national-bank depositary on which drawn and charged to the account of the Treasurer of the United States and they will be finally paid by the Treasurer in the manner prescribed by paragraph 5. However, three years after the close of the fiscal year (June 30) in which they are drawn, warrants and disbursing officers' checks are *not* payable by the Treasurer of the United States, but should be sent to the Secretary of the Treasury (Division of Public Moneys), who will direct payment from the "Outstanding liabilities" appropriation.

7. Each Federal reserve bank, each active national-bank depositary, each assistant treasurer of the United States, and the Treasury of the Philippine Islands shall each day list all warrants and checks cashed, in accordance with the requirements of paragraphs 5 and 6,

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in its daily transcript of account with the Treasurer of the United States, Form 17, and forward them therewith.

8. All disbursing officers will be supplied by the Treasury Department with blank checks bearing the proper symbol number. Any officer not receiving a supply of such checks may use the checks of another disbursing officer by canceling the symbol number appearing thereon and inserting his own number. The absence of the proper symbol number on a check in connection with the signature of a disbursing officer will be sufficient reason for refusing payment thereon.

9. Deposits to the official credit of disbursing officers stationed in the Philippine Islands and the Hawaiian Islands who at present have no other depositary account may be made with the Treasury of the Philippine Islands and the First National Bank of Hawaii, respectively, as heretofore, and such officers shall draw their checks thereon, as heretofore, except as otherwise authorized. Where circumstances warrant it, the Secretary will authorize disbursing officers to maintain balances in local depositaries and draw checks thereon.

10. These regulations do not apply to postal funds (except Post Office Department warrants) nor to court funds deposited under the provisions of sections 995 and 996, Revised Statutes.

BYRON R. NEWTON,
Acting Secretary of the Treasury.

(T. D. 36291.)

Drawback on hack saws.

Drawback on hack saws manufactured by the Quality Saw & Tool Works, of Springfield, Mass., with the use of imported tungsten steel sheets.

TREASURY DEPARTMENT, *April 6, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on hack saws manufactured by the Quality Saw & Tool Works, of Springfield, Mass., with the use of imported tungsten steel sheets.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated March 13, 1916, transmitted herewith, which will show, in the case of each lot of hack saws manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the identity of the imported tungsten steel sheets used in their manufacture, and the number, net weight, and dimensions of hack saws of each size pro-

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duced. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported tungsten sheet steel appearing in the exported hack saws, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on hack saws exported on or after January 12, 1916.

Respectfully, WM. P. MALBURN,
(97813.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36292.)

Drawback on jams and jellies.

Drawback on jams and jellies manufactured by the Greek Products Co., of New York, N. Y., with the use of various imported materials.

TREASURY DEPARTMENT, *April 6, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on jams and jellies manufactured by the Greek Products Co., of New York, N. Y., with the use of imported fruits in juice, fruits in sugar, currant jelly, agar agar, and refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept, which will show, in the case of each lot of jams and jellies manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and kind of product obtained, and the quantities and identity of refined sugar and imported materials of each kind, and the quantity of other materials appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of refined sugar and imported materials which may be taken as a basis for the allowance of drawback shall not exceed the quantities appearing in the exported product, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated March 23, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on the products covered thereby exported on or after July 28, 1915.

Respectfully, WM. P. MALBURN,
(103409-1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36293.)

Drawback on hosiery.

T. D. 35429 of May 24, 1915, extended to cover hosiery manufactured by Henry Taubel & Son, of Riverside, N. J., with the use of imported lisle yarn.

TREASURY DEPARTMENT, *April 6, 1916.*

SIR: The department's regulations of May 24, 1915 (T. D. 35429), providing for the payment of drawback on hosiery manufactured by Thompson Bros., of Milroy, Pa., are hereby extended to cover hosiery manufactured by Henry Taubel & Son, of Riverside, N. J., with the use of imported lisle yarn.

The sworn statement of the manufacturers, dated March 28, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on hosiery exported on or after March 10, 1916.

Respectfully, WM. P. MALBURN,
(95187-18.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36294.)

Drawback on motorcycles and delivery vans.

Drawback on motor cycles and small delivery vans manufactured by the Reading Standard Co., of Reading, Pa., with the use of imported ball bearings.

TREASURY DEPARTMENT, *April 6, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on motorcycles and small delivery vans, manufactured by the Reading Standard Co., of Reading, Pa., with the use of imported ball bearings.

The allowance shall not exceed the number of imported ball bearings appearing in the exported vehicles, as shown by the sworn statement of the manufacturers, dated March 1, 1916, which is transmitted herewith, together with a supplemental sworn statement of the manufacturers, dated March 27, 1916.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after February 18, 1916.

Respectfully, WM. P. MALBURN,
(104741.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36295.)

Drawback on toilet preparations.

Drawback on perfumery manufactured by Vail Bros., of Philadelphia, Pa., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *April 6, 1916.*

Sir: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on perfumeries manufactured by Vail Bros., of Philadelphia, Pa., with the use of domestic tax-paid alcohol.

A manufacturing record shall be kept, which will show, in the case of each lot of perfumery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, proof, and identity of domestic tax-paid alcohol used, the kind and quantity of perfumery produced, and the number of bottles of perfumery of each nominal size obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported perfumery, with a maximum of the quantity used in the manufacture thereof, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated March 28, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on perfumery exported on or after March 10, 1916.

Respectfully, WM. P. MALBURN,
(104782.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36296.)

Drawback on medicinal preparations.

Drawback on medicinal preparations designated as "Marvel witch-hazel" manufactured by John A. Edwards, of Whitney Point, N. Y., with the use of domestic tax-paid alcohol for the account of the Humphreys' Homeopathic Medicine Co., of New York, N. Y.—T. D. 30977 of October 6, 1910, revoked.

TREASURY DEPARTMENT, *April 7, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on the medicinal preparation designated as "Marvel witch-hazel," manufactured by John A. Edwards, of Whitney Point, N. Y., with the use of domestic

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tax-paid alcohol for the account of the Humphreys' Homeopathic Medicine Co., of New York, N. Y.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported preparation, as shown by the sworn statement of the manufacturers, dated January 28, 1916, and the sworn statement of Humphreys' Homeopathic Medicine Co., dated March 23, 1916, which are transmitted herewith for the files of your office.

T. D. 30977 of October 6, 1910, is hereby revoked.

Respectfully, WM. P. MALBURN,
(79468.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36297.)

Drawback on carbon electrodes.

Drawback on carbon electrodes manufactured by the National Carbon Co., of Cleveland, Ohio, with the use of imported brass mounts or studs.—T. D. 31423 of March 25, 1911, revoked.

TREASURY DEPARTMENT, *April 7, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on carbon electrodes manufactured by the National Carbon Co., of Cleveland, Ohio, with the use of imported brass mounts or studs.

The allowance shall not exceed one imported brass mount or stud for each carbon electrode exported.

The sworn statement of the manufacturers, dated March 22, 1916, is transmitted herewith for filing in your office.

T. D. 31423 of March 25, 1911, is hereby revoked.

Respectfully, WM. P. MALBURN,
(85798.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 36298.)

Pruning shears and parts thereof.

Appeal directed from decision of the Board of United States General Appraisers of March 16, 1916, G. A. 7876 (T. D. 36251), involving the classification of certain pruning shears and parts thereof.

TREASURY DEPARTMENT, *April 7, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 4th instant, inviting attention to the decision of the Board of United

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States General Appraisers of March 16, 1916, G. A. 7876 (T. D. 36251), involving the classification of certain pruning shears and parts thereof.

Duty was levied on the shears and blades at the rate of 30 per cent ad valorem, under the provision of paragraph 128 of the tariff act of 1913 for "scissors and shears, and blades for the same, finished or unfinished," and on the bolts, nuts, springs, and ratchets, at the rate of 20 per cent ad valorem under paragraph 167 of the said act as manufactures of metal not specially provided for. The board held all the said articles to be free of duty under the provision of paragraph 391 of the tariff act for agricultural implements, in whole or in part, including repair parts.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(95938.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36299.)

Sheep shears—Agricultural implements.

Appeal directed from decision of the Board of United States General Appraisers of March 16, 1916, G. A. 7877 (T. D. 36252), involving the classification of certain sheep shears.

TREASURY DEPARTMENT, *April 7, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 4th instant, inviting attention to the decision of the Board of United States General Appraisers of March 16, 1916, G. A. 7877 (T. D. 36252), wherein certain sheep shears used in removing the wool from sheep, which shears had been assessed with duty at the rate of 30 per cent ad valorem under the provision of paragraph 128 of the tariff act of 1913 for "scissors and shears, and blades for the same, finished or unfinished," were held by the board to be free of duty as agricultural implements under paragraph 391 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(95938.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36300.)

Sumas, Wash., designated as a quarantine station for certain animals.

Amendment 5 to B. A. I. Order 209, designating Sumas, Wash., as a quarantine station for the entry of certain animals.

TREASURY DEPARTMENT, *April 7, 1916.*

To collectors of customs and others concerned:

The appended copy of Amendment 5 to B. A. I. Order 209, designating Sumas, Wash., as a quarantine station for the entry of certain animals is published for the information and guidance of collectors of customs and others concerned.

(56910.) WM. P. MALBURN, *Assistant Secretary.*

(Amendment 5 to B. A. I. Order 209.)

U. S. DEPARTMENT OF AGRICULTURE,

BUREAU OF ANIMAL INDUSTRY.

Regulations for the inspection and quarantine of horses, cattle, sheep, swine, and other animals imported into the United States, amending regulation 1 by designating Sumas, Wash., as a quarantine station for entry of animals.

Effective on and after April 1, 1916.

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.

The regulations of the Secretary of Agriculture for the inspection and quarantine of horses, cattle, sheep, swine, and other animals imported into the United States, issued under date of April 29, 1914, effective July 1, 1914, as amended, are hereby further amended, with the approval of the Secretary of the Treasury, as follows:

Sumas, Wash., is designated as a quarantine station for entry of horses, cattle, sheep, and other ruminants, and swine imported into the United States which are subject to both quarantine and inspection.

The effect of this amendment is to add Sumas, Wash., to the list of ports, subports, and customs stations designated as quarantine stations in regulation 1 of said regulations for the entry of animals subject to both quarantine and inspection.

This amendment shall become and be effective on and after April 1, 1916.

Done at Washington this fifteenth day of March, 1916.

Witness my hand and the seal of the Department of Agriculture.

[SEAL.] D. F. HOUSTON,
Secretary of Agriculture.

Approved:
BYRON R. NEWTON,
Acting Secretary of the Treasury.

(T. D. 36301.)

Drawback on cigarette tobacco.

Drawback on Turkish cigarette tobacco manufactured by the Stephano Bros. (Inc.), of Philadelphia, Pa., with the use of wholly imported Turkish leaf tobacco.

TREASURY DEPARTMENT, *April 8, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on Turkish cigarette tobacco manufactured by the Stephano Bros. (Inc.), of Philadelphia, Pa., with the use of wholly imported Turkish leaf tobacco.

The allowance shall not exceed the net weight of the Turkish cigarette tobacco exported.

The sworn statement of the manufacturers, dated February 7, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on Turkish cigarette tobacco exported on or after January 24, 1916.

Respectfully, WM. P. MALBURN,
(104578.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36302.)

Drawback on medicinal preparations.

Drawback on medicinal preparations manufactured by Barclay & Co., of New York, N. Y., with the use of wholly imported alcohol or wholly domestic tax-paid alcohol.—T. D. 17227 of June 22, 1896, revoked.

TREASURY DEPARTMENT, *April 10, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on medicinal preparations designated as "Barry's pain relief" and "Reuter's sirup," manufactured by Barclay & Co., of New York, N. Y., with the use of wholly imported alcohol or wholly domestic tax-paid alcohol.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated April 3, 1916, transmitted herewith, which will show, in the case of each batch of preparation manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, proof, kind, and identity of the alcohol used, the kind of preparation produced, and the number of bottles of the preparation of each size obtained. A sworn abstract from such manufacturing record and a certificate of manufacture shall be filed covering each batch of preparation produced.

In liquidation, the allowance shall not exceed the quantity of alcohol used in the manufacture of the exported preparation, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on "Barry's pain relief" exported on or after November 25, 1914, and on "Reuter's sirup" exported on or after January 20, 1915.

T. D. 17227 of June 22, 1896, is hereby revoked.

Respectfully, WM. P. MALBURN,
(100377.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36303.)

Cork disks and waste.

Pending further instructions so-called cork waste, consisting of disks known as "throw outs" mixed with cork cuttings, broken disks, etc., will continue to be passed free of duty under paragraph 464, tariff act of 1913.—T. D. 36214 of March 4, 1916, suspended.

TREASURY DEPARTMENT, *April 10, 1916.*

SIR: I have to refer to the department's letter of March 4, 1916 (T. D. 36214), relative to so-called cork waste, consisting of cork disks known as "throw outs" mixed with cork cuttings, broken disks, etc.

In said letter you were directed to assess duty on the proportion of the merchandise represented by the whole disks as manufactured cork disks under paragraph 340 of the tariff act of 1913.

The department is making further investigation in regard to the merchandise, and, pending the result thereof, the instructions in T. D. 36214, of March 4, 1916, will be suspended. You are accordingly directed, until otherwise instructed, to pass merchandise of the character in question free of duty under paragraph 464 of the tariff act.

Respectfully, WM. P. MALBURN,
(44102.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 36304—G. A. 7881.)

Cotton cloth—Average number of the yarn.

1. COTTON CLOTH CONTAINING CLIPPED THREADS.

Woven figured cotton cloth containing clipped threads is dutiable at the appropriate rate under paragraph 252, tariff act of 1913, in accordance with the average number of the yarn found therein by using the method prescribed in paragraph 253 for ascertaining the same from the imported fabric.

2. AVERAGE NUMBER OF THE YARN IN COTTON CLOTH—HOW COMPUTED.

The average number of the yarn mentioned in paragraph 252 does not necessarily refer to the average number of the yarn actually used in manufacturing the fabric, but means the average number of the yarn found by methods of computation, using the weights and measurement of yarns in the imported merchandise obtained in the manner described in paragraph 253, that is, "by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the condition as imported, except that all clipped threads shall be measured as it continuous," and weighing the fabric "after any excessive sizing is removed by boiling or other suitable process."

United States General Appraisers, New York, April 4, 1916.

In the matter of protest 781229 of P. K. Wilson & Son against the assessment of duty by the collector of customs at the port of New York.

[Modified.]

Walden & Webster (*Edward F. Jordan* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid* and *Martin T. Baldwin*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

COOPER, *General Appraiser:* The merchandise covered by this protest consists of figured cotton cloth which was classified as "Jacquard

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figured manufactures of cotton" at 30 per cent ad valorem under paragraph 258 of the tariff act of 1913. Protestants rely upon the claim that said merchandise is dutiable as cotton cloth at the appropriate rate under paragraphs 252 and 253.

In the case of Sachs & Co., G. A. 7618 (T. D. 34858), the board held that the provision for "cotton cloth, woven figured" in paragraph 252 is more specific than the provision for "Jacquard figured manufactures of cotton" in paragraph 258, and that merchandise similar to that here in question was dutiable at the appropriate rate, according to the average number of the yarn, under paragraph 252. On appeal to the United States Court of Customs Appeals the decision was affirmed. United States *v.* Sherman *et al.* (6 Ct. Cust. Appls., 271; T. D. 35501). Upon the authority of said decision, the merchandise in question is dutiable under paragraph 252 according to the average number of the yarn.

But counsel for the importers, in his brief, objects to the method employed by customs officers in ascertaining the average number of the yarn in cloth having clipped threads, which is the character of that here in question, and it therefore becomes our duty to determine if the analyst proceeded correctly in finding the yarn number of the fabrics before us.

Woven figured cotton cloth is provided for in paragraph 252, the pertinent part of which is as follows:

> Par. 252. * * * Cotton cloth when bleached, dyed, colored, stained, painted, printed, woven figured, or mercerized, containing yarn the average number of which does not exceed number nine, 10 per centum ad valorem; exceeding number nine and not exceeding number nineteen, 12½ per centum ad valorem; * * *.

In paragraph 253, Congress defined the term "cotton cloth" and prescribed the following methods to be used in ascertaining the average number of the yarn:

> Par. 253. * * * In the ascertainment of the condition of the cloth or yarn upon which the duties imposed upon cotton cloth are made to depend, the entire fabric and all parts thereof shall be included. The average number of the yarn in cotton cloth herein provided for shall be obtained by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the condition as imported, except that all clipped threads shall be measured as if continuous; in counting the threads all ply yarns shall be separated into singles and the count taken of the total singles; the weight shall be taken after any excessive sizing is removed by boiling or other suitable process.

The paragraph does not define what is meant by the number of the yarn, but both sides agree that it means the ratio between its length and its weight, that is, No. 1 yarn contains 840 yards to the pound, No. 2 contains 1,680 yards to the pound, and so on. As it is impracticable to accurately measure the diameter of the cotton yarn in a fabric, the following regulations were adopted by the Secretary of the

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Treasury (T. D. 33823) for determining the average number of the yarn in cotton cloth:

The length of the yarn is to be counted as equal to the distance covered by it in the cloth, all clipped threads to be measured as if continuous, and all ply yarns to be separated into singles and the count taken of the total singles; any excessive sizing is to be removed by boiling or other suitable process. The number of the yarn is the English number of 840 yards to a pound for a No. 1 yarn.

The average number of the yarn may be found without unraveling the fabric, and is the quotient of the division of the total thread length by the weight in the proportion of 840 yards of yarn equaling 1 pound of 7,000 grains or 1 yard of yarn equaling 8⅓ grains, which is equivalent to a No. 1 yarn.

The so-called "clipped threads" are threads, other than the foundation threads, woven in the cloth by the use of the Jacquard or other attachment to the loom, and form the figures or pattern of the cloth. In the weaving loom, such threads are made to appear on the face or surface of the fabric so as to form the pattern, and, in the plain part of the fabric between the figures, they hang loose on the back of the fabric. Afterwards the fabric is run through a clipping machine, which cuts off these loose threads.

It appears from the testimony of the analyst in this case that the method he employs to find the average number of the yarn in cotton cloth is to weigh a certain number of square inches of cloth and count the warp and filling threads. The length of the yarn in the piece of cloth can thus be obtained by multiplying the number of threads by the dimensions of the cloth, and having the weight and length of the yarns, the size of same can easily be computed. The additional or clipped threads are counted with the other filling threads, and, although the total length of those threads in the cloth may be but a few inches, the whole width of the piece is computed as their lengtn, as the statute provides that the clipped threads shall be measured as if continuous.

The point raised by the importers is that, as the clipped threads are measured as if they were continuous, they should also be weighed as if they were continuous, or, in other words, the weight of the pieces of threads which were clipped from the fabric by the clipping machine should be estimated and added to the weight of the imported fabric before proceeding under the rule of the Secretary of the Treasury to find the average number of the yarn. The importers contend that if such methods were pursued the *actual* number of the yarn used in the manufacture of the cloth could be ascertained, and that, by the methods now employed, the results found are inaccurate and incorrect.

In the case at bar the importers dispute the correctness of the results obtained by the usual method in analyzing two of the numbers of cloth in question—namely, No. 2604 and No. 2606. Samples of these items which had been clipped and samples of the same cloth

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which had not been clipped were introduced in evidence and an analysis obtained of both. In this way when the illustrative samples, including the unclipped threads, were weighed, the weight of the threads ordinarily clipped off were included in the weight of the cloth. As to the samples which were clipped, which represented the merchandise in its imported condition, the usual method of ascertaining the yarn number was followed. The analyses of these samples shows the following: Item 2604, with unclipped threads, average yarn No. 60; item 2604, with clipped threads, average yarn No. 120; item 2606, with unclipped threads, average yarn No. 58; item 2606, with clipped threads, average yarn No. 76.

From a comparison of these results it is apparent that if Congress intended that duty should be levied on woven figured cotton cloth in accordance with the average number of the yarn from which the cloth was actually made, the method ordinarily employed by the analyst for determining the average number of the yarn in clipped-thread goods is incorrect, for the results obtained by the two methods are incompatible and irreconcilable.

But does the law prescribe that duty on cotton cloth shall be based upon the actual number of the yarn in the cloth? We think that it does not. It prescribes that it shall be levied according to the average number of the yarn found by a certain process. Paragraph 253 describes how the number of the yarn is to be found and it lays down methods of finding this dutiable quality with expedition. The purpose of Congress was manifestly to make the examination by customs officers less arduous. This is clearly shown by the following requirements in paragraph 253:

> The average number of the yarn in cotton cloth herein provided for shall be obtained by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the condition as imported, except that all clipped threads shall be measured as if continuous; * * *.

The fact that Congress specified that the clipped threads are to be measured as if they were continuous clearly indicates that it was not the intention to levy duty according to the precise number of the yarn used in manufacturing the cloth. If a fabric contains clipped threads, it is not necessary to measure the short and varying lengths of such threads, for the width of the cloth can be considered, for the computation of duty, as the length of the threads. This of itself shows that Congress intended merely to lay down a rule for finding the rate of duty applicable to the imported fabrics without dissecting the same.

This is further shown by the provision that "the average number of the yarn in cotton cloth * * * shall be obtained by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the condition as imported," which necessarily

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means that the estimated length is an arbitrary one, since all threads because of their necessary interweaving, have an actual length which is greater than that of the length or the width of the cloth or the distance covered by the thread in the cloth. Thus, if a fabric contains a wavy or zigzag thread, it is not necessary to unravel the fabric to bring that thread out straight for measuring. The duty can be ascertained by an examination of the fabric in its imported condition.

By thus measuring the threads in the zigzag pattern and considering them, in ascertaining their size for duty purposes, to be shorter than they actually are, a lower yarn number will be found than was actually used in the manufacture of the cloth. The importers, of course, raise no objection to that, for it involves the payment of a lower rate of duty than the goods would be subject to if the actual number of the yarn used had been obtained; but they do object in the case of the clipped-thread goods when the threads are considered to measure longer than they actually appear in the cloth, for that tends to work the other way and makes the yarn number larger and the duty higher than it would be if methods were used to obtain the actual number of the yarn used in the manufacture of the cloth. There is no question of the congressional intent with respect to the zigzag thread goods, for the method to be used is clearly expressed, and it is reasonable to presume that, as Congress laid down an arbitrary method of computing the number of the yarn in goods of that character, it also intended to lay down an arbitrary method for finding the number of the yarn in the clipped-thread goods without regard to the number of the yarn actually used.

If we were to pursue the methods for arriving at the average number of the yarns claimed to be proper by the importers, it would necessitate withdrawing all the clipped or additional threads in the pattern, measuring and weighing the same, and estimating or guessing at the weight of the threads which had been clipped or removed from the cloth. Even that method would not be accurate, for the testimony of the analyst shows that he could not estimate the size of the yarn by that method within five numbers, or from 10 to 50 per cent of the proper size. We can not believe that Congress intended that classifying officers should be obliged to resort to any such haphazard and indefinite method of procedure in order to arrive at the dutiable classification of any article of imported merchandise.

But counsel for the importers draws attention to the fact that the rates of duty on cotton cloth in paragraph 252 are in all instances 2½ per cent higher than the rates on cotton yarn of the same number in paragraph 250, and he argues that by pursuing the methods for finding the average number of the yarn adopted by the Secretary of the Treasury the customs officers upset the congressional scheme

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of imposing 2½ per cent higher duty on the cotton cloth than on the cotton yarn of the same number from which the cloth is made. In the case at bar if duty were levied in accordance with the size of the yarn actually used in manufacturing the cloth, the merchandise represented by item 2604 would be dutiable at 25 per cent ad valorem, but, under the method usually employed in ascertaining the yarn number from the imported fabric, the merchandise is dutiable at 30 per cent ad valorem; likewise, the merchandise represented by item 2606 would be dutiable at 22½ per cent ad valorem in accordance with the size of the yarn used, while by the method adopted it is dutiable at 25 per cent ad valorem. It may be, however, that such was the intent of Congress, for, under the acts of 1897 (par. 313) and 1909 (par. 323) an additional duty was imposed on cotton cloth of the character of that here in question in which other than the ordinary warp and filling threads were used to form a figure or fancy effect. No good reason has been furnished for discontinuing this difference in the rate of duty on the two classes of fabrics, and we are of opinion that Congress, either knowingly or unknowingly, by the provisions of this act has, by the methods adopted for ascertaining the applicable rate of duty, imposed duties at higher rates on this fancy cotton cloth than on the plainer fabrics.

For the reasons above given we are of opinion that the method employed by customs officers in finding the average number of yarn in the cotton cloth (T. D. 33823) furnishes an accurate method for ascertaining the rate of duty applicable to the imported merchandise and is in accordance with the directions prescribed by Congress in paragraph 253, and we hold that the merchandise in question is dutiable at the appropriate rate under paragraph 252 according to the average number of the yarn found by the usual method as given in the schedule hereto attached. To that extent the protest is sustained.

As to all other merchandise the protest is overruled.

(T. D. 36305—G. A. 7882.)

Sugar tare.

SUGAR TARE—REGULATIONS.

The regulations for determining the tare on sugar bags, promulgated by the Secretary of the Treasury as T. D. 32976, amending article 944 of the Customs Regulations of 1908, and prescribed under the provision in section 2898 of the Revised Statutes (Comp. St., 1913, sec. 5588) that real tare may be ascertained under such regulations as the Secretary of the Treasury may from time to time prescribe, are unreasonable, variable, and difficult of application, and therefore not such regulations as the Secretary of the Treasury was authorized under the

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statute to promulgate, or as are binding upon the importers in so far as they provide for steaming and drying of the bags, and for the amount of sugar to be deducted from the weight of the dry-cleaned bags.—Abstract 38008 overruled.

United States General Appraisers, New York, April 6, 1916.

In the matter of protests 772466, etc., of the Federal Sugar Refining Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Bigelow & Wise (*Carl Whitney* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and BROWN, General Appraisers).

WAITE, *General Appraiser:* The controversy in these cases arises over the importation of certain sugar, the immediate and exact question being whether the Government has allowed the proper and just amount of tare which is to be deducted for the weight of the coverings from the gross weight of the sugar imported. The importations were made in bags or sacks. The protests cover a considerable number of shipments, some of which are not involved in the decision, as claim upon them has been abandoned by the importers. Those shipments upon which claim was abandoned are not included in the schedule hereafter set forth.

The reports from the surveyor's office with reference to the weight of the sugar have nothing to say about the tare. We gather, however, from the weigher's returns filed in the various cases that what is termed "schedule tare," that is, tare of 2.5 pounds to the bag, was allowed upon all the sugar except upon certain sweepings, and upon those actual tare is reported. Where actual tare is given we are not advised as to whether it was taken in accordance with the regulations. We observe, however, that in the majority of cases it exceeds 2.5 pounds to the bag. The gross weight reported by the Government weigher is presumed to be correct, in the absence of any proof to the contrary.

Tare, which is the weight of the coverings to be deducted from the gross weight of the commodity in arriving at the quantity upon which duty shall be assessed, is provided for in the statute and various regulations promulgated thereunder. Section 2898 of the Revised Statutes (Comp. St., 1913, sec. 5588), which is the only statute to which our attention has been called dealing with the question of tare, reads as follows:

In estimating the allowance for tare on all chests, boxes, cases, casks, bags, or other envelope or covering of all articles imported liable to pay any duty, where the original invoice is produced at the time of making entry thereof, and the tare shall be specified therein, the collector, if he sees fit, or the collector and naval officer, if any, if they see fit, may, with the consent of the consignees, estimate the tare according to such invoice; but in all other cases the real tare shall be allowed, and may be ascertained under such regulations as the Secretary of the Treasury may from time to time prescribe; but in no case shall there be any allowance for draft.

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The first regulation promulgated by the Secretary of the Treasury under authority of this statute to which we call attention is found in article 944 of the Customs Regulations of 1908. Among other things it provides:

All tare shall be taken by mark. When sugar is in tierces, hogsheads, barrels, boxes, or irregular packages, actual tare shall be taken. When sugar is in bags, baskets, and mats, actual tare shall be taken as follows: * * *.

It is then provided that anywhere from 1 per cent to 4 per cent of the coverings shall be weighed. It is further provided that—

All receptacles for tare are to be thoroughly cleaned by scraping and sweeping, whenever the nature of the receptacle is such as to make it practicable.

Subsequent to the above, T. D. 30860, promulgated August 6, 1910, provided that "a schedule tare of 2.5 pounds should be allowed for each bag measuring 29 inches by 48 inches."

On November 30, 1912, the regulations known as T. D. 32976 were promulgated, which read as follows:

TREASURY DEPARTMENT, *November 30, 1912.*

To collectors of customs and others concerned:

Article 944 of the Customs Regulations of 1908 relative to the tare of sugar containers is hereby amended so as to read as follows:

All tare shall be taken by mark. When sugar is in tierces, hogsheads, barrels, boxes, or other irregular packages, actual tare shall be taken of all such containers. When the sugar is in baskets or mats, tare will be taken as follows:

	Per cent.
Marks of less than 1,000	4
Marks of 1,000 and less than 4,000 (but in no such mark less than 40 receptacles)	3
Marks of 4,000 and less than 10,000 (but in no such mark less than 120 receptacles)	2.5
Marks of 10,000 and over	1 to 2

However, when sugar is discharged and weighed at points other than refineries, actual tare shall be taken of the largest number of baskets and mats practicable and as nearly as possible the percentage above prescribed. When in the opinion of the weigher the condition of the receptacles is such as to make it advisable to tare a larger percentage than that above provided, he shall tare as many receptacles as in his judgment are necessary to secure a proper tare. All such receptacles are to be thoroughly cleaned by scraping and sweeping before the tare is taken.

A schedule tare is hereby adopted of 2½ pounds per bag for Cuban sugars imported in bags measuring 29 by 48 inches, and such schedule tare shall be verified from time to time by actual tare. When actual tare is taken the percentage of bags to be tared shall be as above prescribed.

The bags shall be first carefully cleaned by sweeping and scraping and then weighed. They shall then be steamed for 2 hours and dried for 24 hours and again weighed. The difference in the two weights thus found will represent the sugar recovered in the steaming process. From the weight of the dry-cleaned bags there shall be deducted such proportionate weight of the material recovered in the steaming process as the ratio between ninety-five one-hundredths of 1 cent per pound and the rate of duty chargeable against the cargo as shown by the regular polariscopic test. The weight per bag thus ascertained shall be the actual tare to be allowed upon the entire impor-

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tation. For convenience in arriving at the proper amount of duty accruing on an importation when actual tare is taken the following procedure will be observed:

The weigher will report, in addition to the total weight of the importation, the weights of the dry-cleaned and steam-cleaned bags separately. From the total weight of the importation the liquidating clerk will deduct the weight of the dry-cleaned bags and will assess upon the net weight the proper rate of duty according to the polariscopic test. To the amount thus ascertained he will then add the duty at the rate of ninety-five one-hundredths of 1 cent per pound upon the quantity of sucrose material recovered in the steaming process—that is, the difference between the weights of the dry-cleaned bags and the steam-cleaned bags.

Schedule tare of 2.5 pounds shall be allowed on all importations, except where the importers shall file a written application representing that the particular importation named in the application contains an excessive number of damaged bags and giving the approximate percentage of the damaged and undamaged bags, and also requesting that actual tare be taken, in which case the surveyor may, with the approval of the collector, if satisfied that the importation includes an excessive number of damaged bags, ascertain the actual tare on the importation in the manner above provided. If the actual tare thus found does not vary from the schedule tare hereinbefore established by more than 5 per cent, then schedule tare only shall be allowed on such importation.

FRANKLIN MACVEAGH, *Secretary.*

T. D. 32976 was, on August 20, 1913, modified by T. D. 33701, which reads as follows:

TREASURY DEPARTMENT, *August 20, 1913.*

SIR: The department refers to your letter of June 2 last, in relation to the ascertainment of tare on Cuban sugar bags under the department's instructions of March 17, 1913, providing that where actual tare is not taken schedule tare of 2.5 pounds per bag only should be allowed, unless the dimensions of the bag exceed 29 by 48 inches by at least 1 inch in length or width.

You invite attention to the fact that bags measuring 29½ by 48⅛ inches or 29⅛ by 48½ inches do not differ by 1 inch or more from the standard dimensions, yet the area in such cases would be more than the area of a bag measuring 29 by 49 inches, and you therefore suggest that the standard area of 1,392 square inches should be the basis rather than the lineal measurements of 29 by 48 inches.

The department's instructions of March 17 last are hereby modified so as to provide that where the superficial area of the bags varies by more than 2 per cent from the standard area of 1,392 square inches, then the schedule tare of 2.5 pounds should be increased or decreased in the same proportion as the superficial area of the bags exceed or is less than 1,392 square inches.

The said instructions are further modified so as to provide that where the bags covered by any mark of an importation differ in size the schedule tare to be allowed should be based on the average dimensions of the entire number of bags contained in such mark.

Respectfully, CHARLES S. HAMLIN,
(21074.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

The last two regulations were promulgated before the importations here in question were made. These regulations were further modified by T. D. 36063, promulgated January 12, 1916.

There can be no question but that the Secretary of the Treasury was authorized to establish and promulgate regulations for the weighing of sugar and the ascertainment of tare as a means of determining

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the amount of duty which should be assessed. So far as such regulations are reasonable and within the scope of his authority and power, the methods therein indicated for ascertaining the weights of the sugar and the tare should be observed. Whether they are equally mandatory upon both the importers and the Government officials we do not decide. It would appear, however, that they are primarily intended for the direction of the Government officials. As stated above, upon the great bulk of these importations allowance was made on the basis of a schedule tare of 2.5 pounds to the bag. The testimony which was introduced on behalf of the importers shows that as a matter of fact a city weigher, in conjunction with the weigher of the importers, made a careful and accurate weight of the commodity and of at least 5 per cent of the packages; that the tare was determined by weighing the bags after they had been beaten against a post or a barrel and carefully swept and scraped. The record does not disclose that any verification of the schedule tare was made in these cases other than that which was made by the weighing above referred to, which was taken by the city weigher and the importers' weigher acting together. The records of this case do not disclose how the amount of 2.5 pounds to the bag, designated as schedule tare, was arrived at. It is fair to assume, however, that it was arrived at by weighing similar bags. It must be admitted, we think, that actual tare, or what is termed in the statute "real tare," is what is sought; and that schedule tare is adopted to facilitate and make less arduous the ascertainment of tare to be allowed. The main question here is whether the tare, as determined and claimed by the importers, may be considered in view of certain provisions found in the fifth paragraph of T. D. 32976. The claim of the Government seems to be that the importers can not be heard with reference to what the tare on a certain shipment is unless they have ascertained the same in accordamce with the regulations promulgated by the Secretary of the Treasury. Whether those regulations are mandatory upon the importers, as stated above, we do not decide; but the question of the reasonableness of the regulations we think may be passed upon. If it is found that certain regulations which have not been complied with are unreasonable, uncertain, or inaccurate, the importers are not required to conform to them. Calling attention to the paragraph above referred to in T. D. 32976, we note its requirements to be that—

> The bags shall be first carefully cleaned by sweeping and scraping and then weighed. They shall then be steamed for 2 hours and dried for 24 hours and again weighed.

It is not provided at what degree of heat they shall be steamed, or in what manner, or under what conditions. Neither is it provided as to what amount of heat shall be applied when they are dried. We can readily conceive of a drying process which might be pursued for 24 hours with very different and varying results with reference to

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the state of dryness which should be attained. We are of the opinion that it would not be just or fair to weigh wet bags, or bags with foreign matter scattered over the outside or embedded in the fabric, when the gross weight of the sugar was taken, and allow for tare only the weight of these bags when all this foreign substance and additional weight, not in fact sugar, was eliminated. Upon this point we refer to Abstract 24706 (T. D. 31255). In that case bags had become wet and stained, and it was the Government's practice to allow them to dry out. One of the weighers stated it was the practice to put the bags in the condition in which they were before being filled with sugar. It was there held:

The tare authorized to be taken by the regulations is actual tare. * * * The bags in their wet condition had already been weighed, and constituted a part of the gross weight of the merchandise, and on this weight the importers had paid duty in accordance with the requirements of the tariff act. In ascertaining the tare they were clearly entitled to have the bags precisely in the same condition as when the gross weight was taken. The practice of taking tare after exposing the bags to the sunlight and air was an erroneous practice.

It may be said in this connection that the department, in T. D. 36063, has repudiated this provision in T. D. 32976, it being amended to read as follows:

The bags shall be first carefully cleaned by sweeping and scraping and then weighed. They shall then be boiled or soaked in water heated to or above the boiling point for two hours or for such time as may be necessary to dissolve or detach all adhering particles of saccharine matter. The bags will then be dried for 24 hours, or until all moisture is removed therefrom, when they will be again weighed.

Considering further the fifth paragraph of T. D. 32976, we find that it is provided—

From the weight of the dry-cleaned bags there shall be deducted such proportionate weight of the material recovered in the steaming process as the ratio between ninety-five one-hundredths of 1 cent per pound and the rate of duty chargeable against the cargo as shown by the regular polariscopic test.

This we think is intended as a provision by means of which duty shall be taken upon the sugar remaining in the dry-cleaned bags; and, in short, provides for a deduction, from the weight of the dry-cleaned bags, of a fraction of the difference in weight between the dry-cleaned and the steam-cleaned bags, this fraction expressing the ratio between the fixed amount of ninety-five one-hundredths of 1 cent per pound and the variable amount expressed by the rate of duty upon one pound of sugar from the cargo in question, which, in turn, depends upon the polariscopic test. The result of this would be to vary the amount of tare to be allowed according to the grade of sugar imported. We see no just or reasonable connection between tare, as provided for in the statute, and the quality of sugar that is imported. We are not advised why .95 was taken as a term of this proportion. Ninety-five one-hundredths of 1 cent appears,

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however, to be the rate of duty on a pound of sugar provided by the statute of 1909 for tank sugars, melada, concrete, and concentrated molasses, testing by the polariscope not above 75 degrees. If the ratio is determined by the adoption of the above rate, it would be inapplicable to these cases arising under the law of 1913, where the rate is seventy-one one-hundredths of 1 cent per pound for the same commodities. (Par. 177, tariff act of 1913.)

We do not find anything in the record of this case to indicate that this method has been pursued to verify the schedule tare adopted by the Government. We are of the opinion that these provisions in the regulations render it uncertain, unfair, variable, and difficult of application. We therefore conclude that it was not such a regulation as the Secretary of the Treasury was authorized under the statute to promulgate, or that the importers were bound to observe.

We are not unmindful of the decision by the board in the case of Federal Sugar Refining Co., protests 725951, etc., reported as Abstract 38008, which is a very short statement of the decision made by the board. A perusal of the decision reveals the fact that the board in that case held that the regulation known as T. D. 32976 was reasonable and binding upon the importers. We are satisfied, however, that this decision can not apply to all the provisions of said regulation. We are of the opinion that the rule stated in Abstract 24706 (T. D. 31255), *supra*, is more in keeping with the spirit and intent of the law; and that the drying process, as applied to the bags which have been weighed in a wet or dirty condition, is unfair and unreasonable. The full purport and meaning of the requirement contained in the fifth paragraph of T. D. 32976 do not seem to have been brought to the attention of the board in Abstract 38008, *supra*. We are therefore of the opinion that that decision, so far as it is contrary to the holding in this case, should be overruled as regards the reasonableness of the requirements in the said fifth paragraph of T. D. 32976.

Having concluded that that portion of the regulations in question was not binding upon the importers, we are confronted with the question as to what tare should be allowed in these cases. Actual or real tare seems to have been arrived at by the joint effort of the importers and the city weigher, in conformity with the valid provisions of the regulations.

The Court of Customs Appeals in the case of American Sugar Refining Co. *v.* United States (3 Ct. Cust. Appls., 69; T. D. 32352) had under consideration the question of the allowance of tare. On page 71 of that report, this language is used by Montgomery, Presiding Judge:

This testimony presents the single question in the case; that is, as to whether an officer having ascertained by such methods as he chooses to employ the actual tare

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on an importation, can substitute an estimate in place thereof. We do not overlook the fact that reasons are assigned for this which are more or less plausible. But the question involved is whether this is a compliance with the statute and the Treasury regulations.

It is sought by the Government in this case to substitute an estimated tare for a tare which has been arrived at with care and in conformity with the valid regulations promulgated under the statute. The fact that "real tare" is sought must not be lost sight of. We are called upon to decide this case upon the record as it is presented to us. We are bound to determine the question involved according to the evidence in the case. Our opinion is that the allowance upon each bag which should be made for tare is that which was arrived at by the joint efforts of the city weigher and the weigher for the importers, as set forth in Schedule A hereto attached.

The collector is authorized to make the allowance indicated in Schedule A. In all other respects, and as to all protests not included in said Schedule A, the action of the collector is affirmed and the protests overruled.

(T. D. 36306—G. A. 7883.)

Sugar tare.

In determining tare to be allowed on importations of sugar in bags, an actual tare, arrived at by weighing 5 per cent of the bags after they have been thoroughly scraped and swept and the stained bags cleaned by washing, should be adopted in lieu of an unverified schedule tare.—Federal Sugar Refining Co.'s case, G. A. 7882 (T. D. 36305) followed.

United States General Appraisers, New York, April 6, 1916.

In the matter of protests 757225, etc., of the W. J. McCahan Sugar Refining Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

[Reversed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Leland N. Wood* and *Samuel Isenschmid*, special attorneys), for the United States.

Before Board 3 (WAITE, HAY, and BROWN, General Appraisers).

WAITE, *General Appraiser:* This decision covers protests 757225 and 769203, the first protest involving one entry and the latter seven entries. Controversy arises over the amount of sugar contained in the importations in question. The real question to be determined is as to the amount of tare which should be allowed in arriving at the quantity of sugar upon which duty should be assessed. The claims in the two protests are substantially the same, to wit, that the Government erred in basing its tare upon a schedule tare rather than upon an actual tare according to the weight of the bags or receptacles. We think the protests are broad enough to admit of a finding as to the

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validity and controlling effect of the regulations of the Secretary of the Treasury relating to sugar tare. That question is necessarily involved in the claim of the importers.

The sugar in question was imported in different vessels at different times. Importation by the *Alderney*, entry 18707, August 25, 1913, is covered by protest 757225. The other seven entries before us are covered by protest 769203, and are as follows:

Vessel.	Entry No.	Date of entry.
Mala	5111	Feb. 27, 1914
Rutherglen	11967	May 12, 1914
Hird	12792	May 19, 1914
Alderney	14338	June 6, 1914
Pinar del Rio	16269	June 30, 1914
Riojano	16701	July 6, 1914
Josey	19188	Aug. 3, 1914

Various marks of sugar are included in the different entries. As nearly as can be ascertained from the record and testimony in the case, the Government's allowance for tare in the importation in the *Alderney*, entry 18707 (protest 757225), was scheduled tare, arrived at by measurement of the bags in that importation, and was at the rate of 2.691 pounds to the bag. In all the entries in question under protest 769203, schedule tare of 2.5 pounds to the bag seems to have been allowed. At the hearing the importers produced testimony as to the weight of the bags arrived at by actually weighing them after they had been cleaned as described in the testimony and hereinafter set forth. The contention of the Government is that the importers can not be heard to dispute the tare allowed by the Government as the basis of liquidation, for the reason that the importers have not ascertained tare in accordance with the regulation which the Government claims was in force at that time, having been promulgated by the Secretary of the Treasury under authority given him in section 2898 of the Revised Statutes (Comp. St., 1913, sec. 5588). The regulation in question is known as T. D. 32976, promulgated November 30, 1912, as modified by T. D. 33701, subsequently promulgated.

T. D. 32976 is in the following language:

TREASURY DEPARTMENT, *November 30, 1912.*

To collectors of customs and others concerned:

Article 944 of the Customs Regulations of 1908 relative to the tare of sugar containers is hereby amended so as to read as follows:

All tare shall be taken by mark. When sugar is in tierces, hogsheads, barrels, boxes, or other irregular packages, actual tare shall be taken of all such containers. When the sugar is in baskets or mats, tare will be taken as follows:

	Per cent.
Marks of less than 1,000	4
Marks of 1,000 and less than 4,000 (but in no such mark less than 40 receptacles)	3
Marks of 4,000 and less than 10,000 (but in no such mark less than 120 receptacles)	2.5
Marks of 10,000 and over	1 to 2

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However, when sugar is discharged and weighed at points other than refineries, actual tare shall be taken of the largest number of baskets and mats practicable and as nearly as possible the percentage above prescribed. When in the opinion of the weigher the condition of the receptacles is such as to make it advisable to tare a larger percentage than that above provided, he shall tare as many receptacles as in his judgment are necessary to secure a proper tare. All such receptacles are to be thoroughly cleaned by scraping and sweeping before the tare is taken.

A schedule of tare is hereby adopted of 2½ pounds per bag for Cuban sugars imported in bags measuring 29 by 48 inches, and such schedule tare shall be verified from time to time by actual tare. When actual tare is taken the percentage of bags to be tared shall be as above prescribed.

The bags shall be first carefully cleaned by sweeping and scraping and then weighed. They shall then be steamed for 2 hours and dried for 24 hours and again weighed. The difference in the two weights thus found will represent the sugar recovered in the steaming process. From the weight of the dry-cleaned bags there shall be deducted such proportionate weight of the material recovered in the steaming process as the ratio between ninety-five one-hundredths of 1 cent per pound and the rate of duty chargeable against the cargo as shown by the regular polariscopic test. The weight per bag thus ascertained shall be the actual tare to be allowed upon the entire importation. For convenience in arriving at the proper amount of duty accruing on an importation when actual tare is taken the following procedure will be observed:

The weigher will report, in addition to the total weight of the importation, the weights of the dry-cleaned and steam-cleaned bags separately. From the total weight of the importation the liquidating clerk will deduct the weight of the dry-cleaned bags and will asess upon the net weight the proper rate of duty according to the polariscopic test. To the amount thus ascertained he will then add the duty at the rate of ninety-five one-hundredths of 1 cent per pound upon the quantity of sucrose material recovered in the steaming process; that is, the difference between the weights of the dry-cleaned bags and the steam-cleaned bags.

Schedule tare of 2.5 pounds shall be allowed on all importations, except where the importers shall file a written application representing that the particular importation named in the application contains an excessive number of damaged bags and giving the approximate percentage of the damaged and undamaged bags, and also requesting that actual tare be taken, in which case the surveyor may, with the approval of the collector, if satisfied that the importation includes an excessive number of damaged bags, ascertain the actual tare on the importation in the manner above provided. If the actual tare thus found does not vary from the schedule tare hereinbefore established by more than 5 per cent, then schedule tare only shall be allowed on such importation.

FRANKLIN MACVEAGH, *Secretary.*

T. D. 33701 modifies the above regulation in that it provides that due allowance shall be made for bags of an increased or diminished size.

It is further interesting to note that in T. D. 36063 (Jan. 12, 1916) the regulations in force when these cases arose were in part repudiated with reference to the method of treatment of the bags to ascertain actual tare. So it would seem that the department has recognized the inaccuracy and unreliability of the regulation as it stood in T. D. 32976.

We have held in Federal Sugar Refining Co.'s case, protests 772466, etc., G. A. 7882 (T. D. 36305), that the regulation providing for the steaming and drying and the ascertainment of the amount of sugar

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in the bags which were dry-cleaned, is not binding upon the importers for reasons therein stated. When we come to consider the testimony here given, it is difficult to understand what use T. D. 32976 serves in the administration of the tariff law except to fix the schedule tare. We are not informed that any of its provisions were adhered to by the Government officers in ascertaining the tare in these cases, and it is denied that such officers are in any way bound to observe its provisions with reference to the ascertainment of actual tare at the instance of the importers. The language of the regulation is that—

> Schedule tare of 2.5 pounds shall be allowed on all importations, except where the importers shall file a written application representing that the particular importation named in the application contains an excessive number of damaged bags and giving the approximate percentage of the damaged and undamaged bags, and also requesting that actual tare be taken, in which case the surveyor may, with the approval of the collector, if satisfied that the importation includes an excessive number of damaged bags, ascertain the actual tare on the importation in the manner above provided.

The regulation does not seem to compel the surveyor to comply with the request of the importers, and in this case the refusal to comply is defended upon the ground that no proper application was made by the importers.

It will be observed that T. D. 32976 contains a provision that—

> All such receptacles (referring to receptacles containing sugar) are to be thoroughly cleaned by scraping and sweeping before the tare is taken.

It is also provided that when schedule tare is taken, "such schedule tare shall be verified from time to time by actual tare."

We are not informed by the testimony or the record in these cases that any verification has ever taken place. As we understand it, to verify is to prove the accuracy of. We think it was contemplated that actual tare, or the actual weight of such receptacles, should be determined to verify schedule tare. We can not conceive how a verification could take place by weighing receptacles in another importation, or some different or prior importation. This schedule tare was adopted previous to November 30, 1912, and so far as we are enlightened by the record in this case nothing since has been done to verify it. The testimony herein very pointedly shows the necessity of such verification because the statement is sworn to, and not contradicted, that the bags may vary in weight before any sugar is put into them by reason of difference in the quality of material used in making them, even though they are of the same size.

As stated above, it is claimed by Government counsel that the importers can not be heard on the question as to what the actual tare in these cases is because they have not ascertained it in conformity with the regulation; and we understand it to be contended that, even though they had complied with the requirements of the regulation, they could not be heard to contradict the Government's

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schedule tare unless they had at the same time shown that the method of procedure followed by the Government officers was illegal or incorrect. In other words, the regulation seems to have been made use of for the purpose of paralyzing the efforts of the importers without any attempt on the part of the Government to ascertain the actual tare or to verify the schedule tare.

The testimony with reference to the tare in these cases was produced by the importers. It was of two witnesses who have had long experience in handling sugar, 25 years or more, as the testimony is recalled. Their method of procedure was carefully to scrape and shake the bags and to weigh not less than 5 per cent in number; and in case there were any stained bags (the word "stained" meaning bags that had been wet or to which the sugar had unduly adhered by reasons of dampness or moisture which exudes from the cargo and saturates the bags), the same percentage of those was isolated, and they were washed in water until, as the testimony shows, practically all of the sugar was removed. In the way thus indicated the average weight of the bags in each entry was determined.

In connection with this testimony the importers placed upon the stand the Government weigher, who weighed all the sugar except that which was imported in the *Alderney*, entry 18707 (protest 757225) The various weights arrived at by Assistant Weigher Ball were introduced in evidence. The method pursued by him in arriving at these weights was practically the same as that observed by the other witnesses produced by the importers. The other witnesses are spoken of as public or city weighers. It seems they are licensed weighers who are employed by the sellers of the sugar to ascertain the weight of the sugar imported as the basis of settlement between the seller and the purchaser of the sugar. In these cases the weights found by these weighers were accepted as the basis of settlement. Their testimony then is in the nature of testimony against interest.

It is claimed by the Government that the testimony of Assistant Weigher Ball should have no weight in the premises, because it is stated, this was an incomplete determination of the actual tare, incomplete because it was not arrived at as directed by the regulations.

Our duty in this case is to arrive at a tare that will be equitable and as nearly correct as possible. When the method pursued in handling these cargoes of sugar is taken into account, it must appear to any one that absolute accuracy is impossible. If the weight of the bags is sought to be determined by the method indicated in the regulations, to wit, by steaming and drying, it is conceded that it would be merely an approximation. It is true a little more sugar might be taken away from the bag, but at the same time a great deal of starch and sizing, and a good deal of foreign substance which

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may be termed dirt, would be eliminated, all of which had been included in the gross weight of the sugar, and to eliminate which would be detrimental to the rights of the importers. As stated above, a little sugar may remain in the bags, but from the testimony we are impressed with the claim that it is negligible if the bags are properly scraped, swept, and cleaned. The material recovered is a substance a part of which is used to dampen sugar in the refinery, but it is impossible to granulate it, and, as one witness stated, it was practically useless as a commercial commodity; and even though the importers washed the bags after the sugar is taken therefrom, the primary purpose of that washing is to clean the bags so they may be sold as second-hand goods, rather than to save the sugar remaining in them.

The determination of schedule tare is based undoubtedly (although we are not so advised by the testimony) upon weights of coverings found at some previous time. Just how the bags are treated in ascertaining schedule tare we are not told; and when only 5 per cent of the bags is actually weighed the result can be but an approximation or estimate. The question here is, Which is the more reliable, accurate, and equitable between the Government and the importers—to accept a schedule tare (which, we think, has clearly been shown to be incorrect in these cases), or to take a tare arrived at by actual weighing after the bags have been cleaned in the manner described in the testimony? We are of the opinion that the importers made a proper and sufficient claim for actual tare. We do not understand it is disputed but that they did in four of the different importations. Notwithstanding that fact, actual tare seems not to have been taken except as indicated in the testimony of witness Ball. We think a decision should be made in these cases based upon the tare shown by Assistant Weigher Ball and the other witnesses introduced by the importers. Their figures do not agree. It would probably be too much to expect that any two men would agree in ascertaining the weight under the circumstances under which the weight has to be ascertained. We are of the opinion that an average of the weights given by the witnesses is as near the correct weight as it can be determined. We therefore find the following weights for the bags in the various importations mentioned:

Vessel.	Entry No.	Weight per bag.
		Pounds.
Protest 757225: Alderney	18707	2.74
Protest 769203:		
Maia	5111	2.88
Rutherglen	11967	2.60
Hird	12792	2.68
Alderney	14338	2.70
Pinar del Rio	16269	2.69
Riojano	16701	2.64
Josey	19188	2.81

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We observe among the records in these cases that not infrequently the report of the weigher is made separately upon the sweepings of sugar, and in these cases actual tare is sometimes, if not always, taken, and the actual tare reported is almost invariably more than the weights given above.

Reliquidation will be made according to the preceding figures. In all other respects the protests are overruled. Note Federal Sugar Refining Co.'s case, G. A. 7882 (T. D. 36305), protests 772466, etc.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, APRIL 4, 1916.

No. 39493.—Protests 785317, etc., of Frank P. Dow Co. et al. (Seattle).

SEA-GRASS FURNITURE.—Merchandise classified as furniture in chief value of sea grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed to be in chief value of wood, dutiable at 15 per cent under paragraph 176.

Opinion by McClelland, G. A. On the authority of Abstract 39130 the furniture in question was held dutiable under paragraph 176, as claimed.

No. 39494.—Protest 792498 of James P. Smith & Co. (New York).

GLASS BOTTLES, DECORATED.

SULLIVAN, *General Appraiser:* At the trial the appraiser's report was offered in evidence by protestant's counsel, and, on counsel for the United States saying he had no objection, received in evidence. It states:

The merchandise consists of molded glass bottles containing lime juice, having an ornamental design thereon in the form of a raised vine decoration representing the rose. It was returned for duty as molded glass bottles ornamented in any manner at 45 per cent ad valorem under paragraph 84, act of 1913, in harmony with T. D. 34888, and following department instructions in T. D. 35167.

The claim relied on in the protest is that this merchandise is dutiable under paragraph 83 of the same act at the rate of 30 per cent ad valorem.

There is an official sample in evidence. It consists of a tall thin bottle containing lime juice. This bottle is ornamented with sprays of leaves and fruit. The bottle has the appearance of having been blown in a mold, and decorated in the molding, not by a separate or additional process.

The testimony of the examiner who passed the merchandise is that he has been passing this character of merchandise for four years, and that prior to March 27, 1915, they were passed as undecorated, plain molded bottles, and that subsequent thereto they were returned as decorated.

The applicable portions of the paragraphs in question are as follows:

83. *Plain* green or colored, molded or pressed, and flint, lime, or lead glass bottles, vials, jars, and covered and uncovered demijohns, and carboys, any of the foregoing, filled or unfilled, not otherwise specially provided for in this section, and whether their contents be dutiable or free (except such as contain merchandise subject to an ad valorem rate of duty, or to a rate of duty based in whole or in part upon the value thereof which shall be dutiable at the rate applicable to their contents), 30 per centum

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ad valorem: *Provided*, That the terms bottles, vials, jars, demijohns, and carboys, as used herein, shall be restricted to such articles when suitable for use as and of the character ordinarily employed as containers for the holding or transportation of merchandise, and not as appliances or implements in chemical or other operations.

84. *Glass bottles*, decanters, and all articles of every description composed wholly or in chief value of glass, *ornamented or decorated in any manner*, * * * and all articles of every description, *including bottles* and bottle glassware, composed wholly or in chief value of glass *blown either in a mold or othewise;* all of the foregoing, not specially provided for in this section, *filled or unfilled*, and whether their contents be dutiable or free, 45 per centum ad valorem: * * *. (Italics ours.)

It will be observed that paragraph 83 provides for plain bottles and paragraph 84 for glass bottles ornamented or decorated in any manner, filled or unfilled. As will be seen by a mere examination of the sample, the bottles in question are not plain, but decorated.

It seems to us that the board's decision in re protest 730509 of Emile Utard, G. A. 7627 (T. D. 34888), is applicable to this case. The merchandise there was metal sprinkler tops designed for use on bottles, accompanying which, and serving as screw covers therefor, were small detachable metal caps embossed on top with a figure or design representing a basket filled with flowers. The articles were classified as sprinkler tops decorated, and duty levied thereon at 40 per cent ad valorem under paragraph 164 of the tariff act of 1913, which specifically provided for sprinkler tops decorated. The importer contended that they were not decorated, and were dutiable under the first part of said paragraph as sprinkler tops not decorated at 30 per cent ad valorem. The design in question was shown to be a trade-mark, and the counsel for the importer therefore contended that it could not also be held to be a decoration. In the opinion Judge Fischer, speaking for the board, said:

In the case of In re Utard, G. A. 4769 (T. D. 22503), * * * precisely the same figure of a basket of flowers was held to constitute a decoration. In so holding we there said:

"As to the bottles represented by No. 2724, we are of the opinion that the picture of a basket of flowers on the label constitutes a decoration, and therefore find that the bottles are decorated by printing, painting, or otherwise."

* * * * * * *

The bottles covered by the decisions in the Utard cases, hereinbefore cited, were decorated in the molding and not by any distinct or additional subsequent process. However, it is not essential that a decoration should be the result of an added process, because many articles can be, and are, made ornamental and of a decorative character simultaneously with their production.

The board held that the figure of a basket filled with flowers constituted a decoration upon the sprinkler tops in question in that case. That authority is practically on all fours with this case, and following it we hold that the bottles in question are decorated.

The protest is overruled, and the collector's decision affirmed.

No. 39495.—Protest 774434 of Semon Bache Co. (New York).

WINDOW GLASS—GLASS SIGNS.—Panes of glass 12 by 10 inches, having the word "Exit" cut thereon, classified as articles of glass, cut and colored, at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable as window glass, flashed, under paragraphs 85 and 90.

Opinion by SULLIVAN, G. A. It was found that the merchandise is ordinary window glass, flashed, the ruby coloring produced by flashing while it is in the molten state, and the word "Exit" placed thereon by a process known as sanding after it has cooled. It was held dutiable under the eo nomine provisions in paragraphs 85 and 90, as claimed.

No. 39496.—Protest 729992 of Attleboro Manufacturing Co. (Boston) and protests 757306, etc., of Baker-Miller Shipping Co. (New York).

METAL MATERIALS USED IN THE MANUFACTURE OF JEWELRY.—Metal rings used in the manufacture of neck or watch chains and an expansible holder for a watch, a

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piece of chain, and a spring ring used in the manufacture of watch bracelets, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinions by SULLIVAN, G. A. On the authority of Mamluck v. United States (6 Ct. Cust. Appls., 556; T. D. 36198) the articles in question were held dutiable as materials of metal suitable for use in the manufacture of jewelry at 50 per cent under paragraph 356. Protests overruled, the correct claim not having been made.

No. 39497.—Protest 767371 of Hammel, Riglander & Co. (New York).

PARTS OF CHAINS.—Swivels classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. It was held that chains and parts thereof being provided for eo nomine in paragraph 356, tariff act of 1913, are dutiable accordingly at 60 per cent, as classified. Mamluck v. United States (6 Ct. Cust. Appls., 556; T. D. 36198), affirming G. A. 7755 (T. D. 35592), followed.

No. 39498.—Protest 760214-51311 of Marshall Field & Co. (Chicago).

AMBER NECKLACES—JEWELRY.—Real amber necklaces classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of amber at 10 per cent under paragraph 367.

Opinion by SULLIVAN, G. A. Protest overruled. Mamluck v. United States (6 Ct. Cust Appls., 556; T. D. 36198) followed.

No. 39499.—Protest 770434 of Strawbridge & Clothier (Philadelphia).

AMBER NECKLACES—JEWELRY—BEADS.—Graduated amber bead necklaces with clasps, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as articles in chief value of beads at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. The fact that the neckalces in question are jewelry was not disputed by the record. Protest overruled. American Bead Co v. United States (7 Ct. Cust. Appls., —; T. D. 36259) cited.

No. 39500.—Protest 761747 of Cohn & Rosenberger (New York).

IMITATION JET NECKLACES.—Necklaces composed of metal and paste glass in imitation of jet, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of paste at 30 per cent under paragraph 95.

Opinion of SULLIVAN, G. A. On the authority of United States v. Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) the imitation jet necklaces were held dutiable under paragraph 95, as claimed. American Bead Co. v. United States (7 Ct. Cust. Appls., —; T. D. 36259) cited.

No. 39501.—Protests 766093-52423 and 769735-55151 of Marshall Field & Co. (Chicago).

IVORY JEWELRY.—Brooches and pendants of carved ivory, having metal pins or rings, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of ivory or vegetable ivory at 35 per cent under paragraph 369.

Opinions by SULLIVAN, G. A. It was admitted that the merchandise is commonly and commercially known as jewelry. It was held dutiable under paragraph 356. G. A. 7754 (T. D. 35591), affirmed in Mamluck v. United States (6 Ct. Cust. Appls., 556; T. D. 36198) followed.

No. 39502.—Protest 775362-55591 of Marshall Field & Co. (Chicago).

JET CHAINS—JEWELRY.—Chains composed of beads made of real jet, having metal clasps, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act

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of 1913, are claimed dutiable as articles of jet at 45 per cent under paragraph 98 or as articles composed in chief value of beads at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. The merchandise was found to be commercially known as jewelry and was held properly classified under paragraph 356.

No. 39503.—Protest 775373-56148 of Phelps Bros. & Co. (Chicago).

SLIPPERS OF COTTON—METAL AND BONE CHARMS—JEWELRY.—Slippers classified as silk wearing apparel at 50 per cent ad valorem under paragraph 317, tariff act of 1913, are claimed dutiable as cotton wearing apparel at 30 per cent under paragraph 256. Charms composed of metal and bone classified as jewelry at 60 per cent under paragraph 356 are claimed dutiable as manufactures of bone at 20 per cent under paragraph 368.

Opinion by SULLIVAN, G. A. From the report of the analyst it was found that the slippers in question are cotton chief value. They were held dutiable under paragraph 256. The charms, being admittedly commercially known as jewelry, were held properly classified under paragraph 356. G. A. 7754 (T. D. 35591), affirmed in American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259), followed.

No. 39504.—Protest 783983 of Snow's United States Sample Express Co.

PLATINUM MOUNTINGS—MATERIALS FOR JEWELRY.—Platinum mountings for brooches, pendants, and rings, which are subsequently set with precious stones, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as articles composed in part of platinum at 50 per cent under paragraph 167, or as materials of metal suitable for use in the manufacture of jewelry at 50 per cent under paragraph 356.

Opinion by SULLIVAN, G. A. It was found that these platinum mountings are not completed articles of jewelry in the condition imported. They were held dutiable as materials of metal suitable for use in the manufacture of jewelry at 50 per cent under paragraph 356. Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) followed.

No. 39505.—Protests 794418-58078, etc., of Marshall Field & Co. (Chicago).

NECKLACES—BEADED ARTICLES—IMITATION PEARL BEADS.—Imitation pearl beads strung on cotton strings, the beads graduated in size, classified as beaded articles at 50 per cent ad valorem under paragraphs 333, tariff act of 1913, are claimed dutiable under the provision in the same paragraph for imitation pearl beads, loosely strung, at 35 per cent.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39238 the pearl beads in question were held properly classified at 50 per cent under paragraph 333. [See Abstract 39609.]

No. 39506.—Protests 796666, etc., of Albert Lorsch & Co. (New York).

COMPASSES—CHAINS—JEWELRY.—Merchandise invoiced as compasses and chains in continuous lengths, valued at less than 30 cents per yard, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed dutiable under the same paragraph at 50 per cent.

Opinion by SULLIVAN, G. A. On the authority of Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) and Abstract 38944 the compasses and chains in question were held dutiable at 50 per cent under paragraph 356.

No. 39507.—Protest 767357 of L. D. Bloch & Co. (New York).

MUSICAL STEINS—TOYS.—Steins composed of decorated earthenware, having metal covers, and a small musical toy inserted in the bottom, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon the amended return of the appraiser the steins in question were held dutiable as manufactures of metal under paragraph 167. Abstract 36100 (T. D. 34629) followed.

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No. 39508.—Protest 771585 of R. F. Downing & Co. (New York).

CELLULOID SHEETS.—Celluloid sheets classified at 40 per cent ad valorem are claimed dutiable at 25 per cent under paragraph 25.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the celluloid sheets in question were held dutiable at 25 per cent under paragraph 25.

No. 39509.—Protests 772032, etc., of Abraham & Straus (New York).

TISSUE OR CRAPE PAPER ARTICLES—TOYS.—Paper hats and caps and boxes, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 323.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the articles manufactured from crape or tissue paper were held dutiable at 30 per cent under paragraph 323.

No. 39510.—Protest 777072-56294 of G. W. Sheldon & Co. (Chicago).

COMPASSES, POCKET.—Small compasses classified at 60 per cent under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. One item was found to be composed of black enameled metal with a rim of what appears to be gold-plated metal surrounding the glass face, with stem and ring also apparently gold plated, probably suitable for attachment to watch chains as a charm. As to this item the protest was overruled without affirming the action of the collector. The other item was found to be a cheap compass of nickel-plated brass, not suitable for a watch charm. This was held dutiable at 20 per cent under paragraph 167, as claimed. G. A. 7824 (T. D. 35949) followed.

No. 39511.—Protest 797558 of American Express Co. (New York).

TIMERS—STOP WATCHES.—Stop watches specially designed for timing speed contests, etc., classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 161.

Opinion by SULLIVAN, G. A. The timers in question were held dutiable at 20 per cent under paragraph 167. Protest overruled, this claim not having been made.

No. 39512.—Protest 778508-55640 of Gallagher & Ascher (Chicago).

EXPOSURE METERS.—Exposure meters to determine the strength of light, used with a camera in photography to determine the length of time to expose a photographic film or plate, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The article is about the size and shape of a watch, composed of nickel-plated metal, having a dial covered with glass, and a stem and ring. It was held dutiable under paragraph 167, as claimed. G. A. 7824 (T. D. 35949) followed.

No. 39513.—Protest 781353 of Butler Bros. (St. Louis).

SEWING BASKETS—TOYS.—Sewing baskets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as baskets at 25 per cent under paragraph 175.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the baskets in question were held dutiable at 25 per cent under paragraph 175, as claimed. Abstract 39147 followed.

No. 39514.—Protest 797291 of Morimura Bros. (New York).

EASTER BASKETS.—The appraiser reports that the merchandise in question consists of small baskets of colored chip or bamboo, ornamented with an artificial chick, or duckling of cotton or other material, known as Easter baskets or novelties. It was classified as toys at 35 per cent advalorem under paragraph 342, tariff act of 1913, and is claimed dutiable as baskets at 25 per cent under paragraph 175.

Opinion by SULLIVAN, G. A. Upon the authority of G. A. 7790 (T. D. 35796) the baskets in question were held dutiable under paragraph 175, as claimed.

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BEFORE BOARD 1, APRIL 6, 1916.

No. 39515.—Protest 770813–55441 of Bernard, Judae & Co. (Chicago).

GLASS RODS, COLORED.—Glass rods of a milky color, tapered at the ends, classified as articles of colored glass at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable as manufactures of glass at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. It was found that the merchandise is made from cryolite, fluorspar, and feldspar mixed together. It was held properly classified as articles of colored glass under paragraph 84. G. A. 7580 (T. D. 34602) followed. United States *v.* Wakem (2 Ct. Cust. Appls., 411; T. D. 32170) cited.

No. 39516.—Protests 755762–53960, etc., of G. W. Sheldon & Co. (Chicago).

MAGNIFYING GLASSES—LINEN PROVERS.—Magnifying glasses or linen provers, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39249 the magnifying glasses or linen provers in question were held dutiable as microscopes under paragraph 94, as claimed.

No. 39517.—Protests 732351–46288, etc., of Q. Nervione (Chicago).

RUBBER BALLOONS—TOYS.—Small rubber balloons, some with advertising matter thereon, classified as parts of toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of india rubber or gutta percha at 10 per cent under paragraph 368.

Opinion by SULLIVAN, G. A. The balloons in question were found to be toys and held properly classified under paragraph 342. Abstract 35163 (T. D. 34307) cited.

No. 39518.—Protest 797605 of James P. Smith & Co. (New York).

WASH BLUE.—Wash blue containing ultramarine, classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 52.

Opinion by BROWN, G. A. On the authority of Abstracts 38629 and 38840 the merchandise in question was held dutiable as wash blue containing ultramarine, under paragraph 52, as claimed.

No. 39519.—Protests 455160, etc., of F. H. Leggett & Co. et al. (New York & Boston).

FISH IN TINS.—Merchandise classified as fish in tins under paragraph 270, tariff act of 1909, is claimed dutiable under paragraphs 272 and 273.

Opinion by BROWN, G. A. Protests unsupported; overruled.

No. 39520.—Protest 788771 of E. M. Mathis (Ogdensburg).

FISH ROE.—Sturgeon roe packed in a tin pail which is surrounded with ice and placed inside of a wooden bucket, classified as preserved roe of fish at 30 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed free of duty as eggs of fish under paragraph 478.

Opinion by BROWN, G. A. It was found that the fish roe in question was not preserved within the meaning of paragraph 216 and it was held free of duty under paragraph 478, as claimed. Moscahlades *v.* United States (6 Ct. Cust. Appls., 399; T. D. 35973) followed. Hansen *v.* United States (1 Ct. Cust. Appls., 1; T. D. 30769) cited.

No. 39521.—Protest 781699–5996 of May & Ellis Co. (New Orleans).

WOOL CLOTH.—Cloth classified as composed in chief value of the hair of the Angora goat, at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed dutiable as wool cloth at 35 per cent under paragraph 288.

Opinion by BROWN, G. A. From the report of the analyst the cloth in question was found to be wool chief value. It was held dutiable under paragraph 288, as claimed.

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No. 39522.—Protest 733430 of Fritzsche Bros. (New York).

EXTRACT OF CHLOROPHYLL.—The appraiser reports the merchandise under consideration to be extract of chlorophyll put up in packages of less than 2½ pounds gross weight. It was classified at 20 per cent ad valorem under paragraph 17, tariff act of 1913, and is claimed dutiable under the specific provision therefor in paragraph 31 at 15 per cent.

BROWN, *General Appraiser:* * * * Witness for the importers, a chemist connected with the firm, testified: That chlorophyll is the natural coloring constituent of all green plants; it is extracted from plants and is a simple chemical constituent that you can write with one formula; it is an organic compound; the merchandise in question is the extract just as it comes from the plant; that chlorophyll is usually extracted from grasses, which are macerated in an acidulated aqueous solution to break up the fibrous cells, then the chlorophyll is washed out by ethyl or methyl alcohol; a little ether or benzol is also used in the extraction process; and that its chemical composition is not affected by these processes.

As stated by the board in Abstract 37926 (June 17, 1915), wherein it was held that ink did not come within the meaning of the language of paragraph 17:

> It is impossible to give a meaning to "all similar articles" as affecting the word "chemical." A thing is apparently either a chemical or it is not a chemical. There may be a number of things that are similar to medicinal compounds, and it is evident that the expression "except soap" is used by reason of the fact that many soaps are more or less medicinal. But it is hard to imagine an article similar to a chemical compound or combination, and without attempting in this case to say where Congress intended to draw the line, it would seem a misnomer to call an ink a chemical compound, even if entirely composed of chemicals in a technical sense.

For the same reasons we can not hold that the substance here in question is an article similar to a chemical compound.

The record shows that it is not a medicinal compound or an article similar thereto.

In addition it may be noted that under the definitions of a chemical compound laid down by the Court of Customs Appeals in United States *v.* Davies, Turner & Co. (5 Ct. Cust. Appls., 196; T. D. 34325), and United States *v.* Kraemer & Co. (4 Ct. Cust. Appls., 433; T. D. 33858), wherein it was held that a chemical compound must be an artificial combination of chemicals, this substance would not seem to come within the purpose of Congress in enacting paragraph 17.

We therefore hold that the merchandise is properly dutiable under the provision in paragraph 31 for "extract of chlorophyll," as claimed.

Protest sustained.

No. 39523.—Protest 772457 of Badische Co. (New York).

PHTHALIC ACID ANHYDRIDE.—Phthalic acid classified at 15 per cent ad valorem under paragraph 1, tariff act of 1913, is claimed free of duty as phthalic acid under paragraph 387.

Opinion by BROWN, G. A. On the authority of G. A. 7819 (T. D. 35914) the commodity in question was held free of duty under paragraph 387.

No. 39524.—Protests 769832, etc., of T. D. Downing & Co. (New York).

COAL-TAR OIL.—Merchandise classified as a product of coal tar at 15 per cent ad valorem under paragraph 21, tariff act of 1913, is claimed free of duty as anthracene or anthracene oil under paragraph 452.

Opinion by BROWN, G. A. Protests unsupported; overruled.

No. 39525.—Protests 759551, etc., of Franz Euler & Co. (New York).

ELLOPHANE—GELATIN.—A commodity known as cellophane or biophane, classified by similitude as a manufacture of gelatin at 25 per cent ad valorem under paragraph 34, tariff act of 1913, is claimed dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385.

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Opinion by BROWN, G. A. On the authority of Abstracts 37423 and 38805 the cellophane or biophane in question was held dutiable as a nonenumerated manufactured article under paragraph 385.

No. 39526.—Protest 746728–49359 of G. W. Sheldon & Co. (Chicago).

POLISHING POWDER.—Merchandise classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable as polishing powder at 15 per cent under paragraph 11.

Opinion by BROWN, G. A. The polishing powder in question was held dutiable under paragraph 11. Abstract 38657 followed.

BEFORE BOARD 3, APRIL 6, 1916.

No. 39527.—Protest 780074 of Franklin Sugar Refining Co. (Philadelphia).

SUGAR TARE—REGULATIONS.

WAITE, *General Appraiser*: The question in this case is as to the amount of tare which should be allowed on a certain importation of sugar in bags. Several invoices are covered by the protest. Claim is abandoned on all except the invoice covering the goods in the steamship *Chiswick*. That shipment consisted of 33,600 bags of sugar. Certain tare was deducted from the gross weight of the shipment, but it is claimed by the importers that a greater weight should have been allowed for the bags in which the sugar was imported.

The law governing the allowance of tare is found in Revised Statutes, sec. 2898 (Comp. St., 1913, sec. 5588), which reads as follows:

> In estimating the allowance for tare on all chests, boxes, cases, casks, bags, or other envelope or covering of all articles imported liable to pay any duty, where the original invoice is produced at the time of making entry thereof, and the tare shall be specified therein, the collector, if he sees fit, or the collector and naval officer, if any, if they see fit, may, with the consent of the consignees, estimate the tare according to such invoice; but in all other cases the real tare shall be allowed, and may be ascertained under such regulations as the Secretary of the Treasury may from time to time prescribe; but in no case shall there be any allowance for draft.

A perusal of this section reveals the statement that "in all other cases the real tare shall be allowed, and may be ascertained under such regulations as the Secretary of the Treasury may from time to time prescribe."

The Secretary of the Treasury prescribed regulations, dated November 30, 1912, known as T. D. 32976, which have been slightly modified by T. D. 33701. As modified they were the regulations in force at the time of the importation of these goods. The collector, in ascertaining the amount of sugar upon which duty should be assessed, deducted what is termed "schedule tare," according to a provision in T. D. 32976, as modified by T. D. 33701. The provision in T. D. 32976 is as follows:

> A schedule tare is hereby adopted of 2½ pounds per bag for Cuban sugars imported in bags measuring 29 by 48 inches, and such schedule tare shall be verified from time to time by actual tare.

March 17, 1913, the following instruction was given:

> Where actual tare is not taken, schedule tare of 2.5 pounds per bag only should be allowed, unless the dimensions of the bag exceed 29 by 48 inches by at least 1 inch in length or width.

This instruction was found not to meet all the requirements and was modified by the following language found in T. D. 33701:

> The department's instructions of March 17 last are hereby modified so as to provide that where the superficial area of the bags varies by more than 2 per cent from the standard area of 1,392 square inches, then the schedule tare of 2.5 pounds should be increased or decreased in the same proportion as the superficial area of the bags exceed or is less than 1,392 square inches.

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Reading further in T. D. 33701 we find the said instructions are again modified so as to provide "that where the bags covered by any mark of an importation differ in size the schedule tare to be allowed should be based on the average dimensions of the entire number of bags contained in such mark."

Under these instructions, it appears the Government allowed tare of 2.5 pounds to the bag, against which action the importers filed the following protest:

We hereby protest against your decision as to the rate and amount of duty assessed on the following importation of sugar the product of Cuba, * * * for the reason that the duty has been assessed on a weight of sugar predicated upon a deduction from the gross weight of the sugar imported of an approximated tare, instead of the actual tare (weight) of the bags as ascertained in the usual and customary way.

At the hearing in this case counsel for the Government made objections to the testimony offered by the importers, which objections were referred to the board for final ruling. We specifically overrule those objections. The importers placed upon the stand Robert J. McKnight, who described himself as United States weigher; and also Wilfred Ball, jr., who described himself as assistant weigher. The actual tare of the sugar, it appears, was in the hands of witness Ball. There was no evidence as to the actual weight of the bags involved, as distinguished from the schedule tare, which was the allowance made by the collector, excepting the weights of a certain number of bags which Mr. Ball weighed on his own motion, but did not return in connection with the weight of the sugar or the tare reported by the Government weigher. Such statement with reference to these weights was that in mark G he weighed 37 bags; in mark J, he weighed 30 bags; in mark R, 25 bags; in mark Gomez Mena, 28 bags; and in mark Amistad, 28 bags. This makes a total of 148 bags out of a total importation of 33,600 bags. It will be seen from the foregoing that if the tare reported by the Government weigher is not to be received, the testimony upon which the board can base an opinion with reference to the weight of the bags is very meager. We are of the opinion that the evidence furnished by the importers through Mr. Ball is not sufficient, even in the absence of any other testimony or action by the Government officials with reference to the matter. What is the question here? It is as to the weight of these coverings or bags. The collector has reported a certain weight. This may be from actual weighing, or it may be a mere guess. It is the duty of the importers to furnish some proof that it is not correct, and, further, to furnish proof upon which the board can base a finding of fact as to the weight of the bags. This they have not done. The presumption of correctness we think attends the action of the collector. At all events we are not furnished with sufficient proof that his action is wrong. We therefore conclude that the protest must be overruled, and so hold.

No. 39528.—Protest 792030 of Standard Grocery Co. (New York).

WEIGHT OF SAFFRON.—The commodity in question is saffron which seems to have dried out so that its landed weight is less than that which was shipped. It is claimed that an allowance for the shortage in weight should have been made.

Opinion by WAITE, G. A. The evidence was found not to warrant a disturbance of the collector's action.

No. 39529.—Protest 786792-57331 of G. W. Sheldon & Co. (Chicago).

BOOKCASE—ANTIQUES—ENTIRETIES.—A bookcase is claimed entitled to free entry as an antique under paragraph 656, tariff act of 1913. It was classified as furniture under paragraph 176.

Opinion by WAITE, G. A. The appraiser reports that four doors of the case, which were packed separately, are antique, while the remainder is modern. The value of the antique portion is 5,000 francs, while the modern portion is valued at 1,000 francs. There was no testimony upon the artistic qualities of the doors in question. Protest overruled.

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No. 89580.—Protest 794328 of Manuel Caragol & Son (New York).

BLOOD PUDDING—PREPARED MEAT.—Blood pudding found upon analysis to contain fat, chopped onions, fatty tissue, intestinal skin, annatto coloring matter, dried blood, etc., classified as a nonenumerated manufactured article at 15 per cent ad valorem under paragraph 385, tariff act of 1913, is claimed free of duty as prepared meat under paragraph 545.

Opinion by HAY, G. A. On the authority of United States *v.* Furuya (6 Ct. Cust. Appls., 207; T. D. 35463) and Abstract 38323 the blood pudding in question was held dutiable as a nonenumerated manufactured article under paragraph 385.

No. 89581.—Protests 767527-5698, etc., of Mente & Co. (New Orleans).

WASTE BAGGING.—The appraiser returned the merchandise in question as old wool bags twilled and colored. They were classified as waste at 10 per cent ad valorem under paragraph 384, tariff act of 1913, and are claimed free of duty under paragraph 408.

Opinion by HAY, G. A. It was found that the testimony does not bring the bagging in question within the provisions of paragraph 408. Protests overruled. United States *v.* Crompton (6 Ct. Cust. Appls., 197; T. D. 35442) followed.

No. 89582.—Protest 765244 of T. M. James & Sons (St. Louis).

PROTEST FEE.—In this case a fee of $13 was exacted upon a protest involving 13 entries. A refund of $12 is claimed.

Opinion by HAY, G. A. On the authority of United States *v.* McCoy (5 Ct. Cust. Appls., 264; T. D. 34445), affirming G. A. 7515 (T. D. 33981), it was held that $12 was exacted in excess of the protest fee required by law.

No. 89583.—Protests 797254, etc., of Guaranty Trust Co. et al. (New York).

CLERICAL ERROR.—These protestants claim that a clerical error was made in entering merchandise or liquidating the entry.

Opinion by HAY, G. A. On the authority of United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) and United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485) protests overruled, no manifest clerical errors being disclosed by the records. G. A. 7476 (T. D. 33590) cited.

(T. D. 36307.)

Carbons for electric lights.

HIRSCHBERG *et al.* *v.* UNITED STATES (No. 1613).

1. WITNESS—COMPETENCY.

   A witness with experience in the electric-light carbon business is competent to testify as to the composition of such carbons without having seen them manufactured.

2. CONSTRUCTION, PARAGRAPH 82, TARIFF ACT OF 1913.

   The addition in the tariff act of 1913 of the words "carbons for flaming arc lamps, not specially provided for" to the provisions of the act of 1909 for carbons entirely of petroleum coke and carbons chiefly of lampblack or retort carbon, does not cover all carbons for flaming arc lamps, but only such of them as are not made chiefly of lampblack or retort carbon or entirely of petroleum coke.

3. FLAMING ARC-LAMP CARBONS OF LAMPBLACK OR RETORT CARBON, HOW DUTIABLE.

   Flaming arc-lamp carbons in chief value of lampblack or retort carbon, with or without a core impregnated with chemical salts, are dutiable under

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paragraph 82, tariff act of 1913, as composed chiefly of lampblack or retort carbon at 40 cents per hundred feet, and not as carbons for flaming arc lamps not specially provided for at 30 per cent ad valorem.

United States Court of Customs Appeals, March 28, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38223.

[Reversed.]

Comstock & Washburn (*Albert H. Washburn* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*John R. Rafter*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The importation in this suit consists of electric-light carbons. They were assessed for duty under paragraph 82 of the tariff act of 1913 as carbons for flaming arc lamps, and are claimed to be dutiable under the same paragraph as carbons for electric lighting composed chiefly of lampblack or retort carbon. The Board of General Appraisers found that the testimony was not sufficient to show which provision of paragraph 82 should govern the classification. They considered the testimony as not convincing upon this point.

An examination of the record, however, satisfies us that the board failed to accept at its value the testimony which was adduced on behalf of the importers. There were in evidence in this case various carbon sticks, some of which had a core of about one-sixteenth of an inch impregnated with chemical salts. Others of these carbon sticks were of pure lampblack or retort carbon. Still another carbon stick, included in the importation but not here in controversy, was composed of lampblack impregnated throughout with chemical salts.

The witnesses testified as to these various exhibits that those containing the core of impregnated salts were still of chief value of lampblack; that as to the homogeneous carbon sticks, in which the chemical salts were present throughout, the chemical salt was of chief value. As to the latter, no claim was made.

This testimony stood undisputed. But it appeared on cross-examination that these witnesses had never been in the mills in which these carbons were produced, and it was perhaps this fact that led the board to discount their testimony and treat it as insufficient. The cross-examination of one of the witnesses was as follows:

Q. You have been speaking about the ingredients in some of these different exhibits. How have you acquired that information?—A. By having been in the business for such a long while.

Q. Have you ever been in the mills where these things are made?—A. I have not; but I have made some tests in lamps and have seen the carbons burning.

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It appears that the witness Hirschberg had been in the carbon business since 1915 and that the witness Dubosch had been in the business for 17 years. It is easy to see that these witnesses might have acquired a knowledge of the contents of these carbons without actually having seen them manufactured. They were, for instance, enabled to make comparisons between a carbon stick composed wholly of lampblack and those in which chemical salts had been introduced in the core, and by comparison of the prices of the two, they were enabled to determine whether the lampblack or the salts were of chief value. So, too, a comparison of these grades with the homogeneous carbon would have enabled them to determine whether a substance other than lampblack constituted the chief value of the article. The testimony, it is to be borne in mind, is important only as affecting the question of value. The exact quantity of the ingredient or chemical salts is not material. The question is whether, in comparison, the chemical salts or the lampblack is of chief value, and this might be reached by comparisons such as those suggested. At all events the testimony so admitted stands without contradiction, and we think is enough to warrant prima facie a finding that the homogeneous carbons were in chief value of chemical salts and that the others were not.

This brings us to a consideration of the legal question in the case. Paragraph 82 reads as follows:

82. Gas retorts, 10 per centum ad valorem; lava tips for burners, 15 per centum ad valorem; carbons for electric lighting, wholly or partly finished. made entirely from petroleum coke, 15 cents per hundred feet; if composed chiefly of lampblack or retort carbon, 40 cents per hundred feet; carbons for flaming arc lamps, not specially provided for in this section, and filter tubes, 30 per centum ad valorem; porous carbon pots for electric batteries, 15 per centum ad valorem.

The act of 1909, paragraph 96, provided for "carbons for electric lighting, wholly or partly finished, made entirely from petroleum coke, 35 cents per hundred feet; if composed of lampblack or retort carbon, 65 cents per hundred feet."

The provision of the act of 1913 follows closely this provision except in changing the rate and provides for "carbons for electric lighting, wholly or partly finished, made entirely from petroleum coke, 15 cents per hundred feet; if composed chiefly of lampblack or retort carbon, 40 cents per hundred feet."

It appears that the form of carbon containing a core of salts had been imported into this country as early as July, 1905, and has been in the market ever since as a commercial article. So that when the act of 1909 was adopted these carbons used for flaming arc lamps were provided for and covered by the provision of paragraph 82 last above quoted.

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It appears by a petition to Congress made by a domestic manufacturer that within a year or two before the law of 1913 was enacted a new impetus had been given to the lighting industry when a new long-burning type of flaming arc lamp was put upon the market. The older types such as were in existence under the law of 1909 would burn from 10 to 17 hours, whereas the newer types are claimed to burn from 100 to 125 hours. Congress, in response to a request that the flaming arc lamp be treated separately and placed on an ad valorem basis, inserted the succeeding clause, namely, "carbons for flaming arc lamps, not specially provided for in this section, * * * 30 per centum ad valorem."

The question presented is whether this latter clause is to replace the provision for carbons for electric lighting if composed chiefly of lampblack or retort carbon at the specific rate of 40 cents per hundred feet under the present law. In other words, whether, in view of the presence of the limitation "not specially provided for in this section," carbons for flaming arc lamps are to be given controlling effect, or whether this clause is to be held restricted by this provision to such as are not provided for in the earlier portions of the paragraph. We think the latter construction the sound one. It is to be kept in mind that this is the working provision under which this identical material must have been classified under the act of 1909. It was reenacted in substantially the same terms, with the change of rate. It had therefore been again specially provided for in the act of 1913, and Congress, by inserting the provision restricting the particular provision for carbon for flaming arc lamps to such as are not specially provided for in the section, intended that such as were specially provided for would be controlled by the earlier provision, which was likewise present in the former tariff law.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 36308.)

Plated articles.

CROSS CO. *et al. v.* UNITED STATES (No. 1618).

1. PLEADING—PROTEST—MULTIFARIOUSNESS.

The board of general appraisers may not, *sua sponte*, dismiss a protest for multifariousness.

2. CONSTRUCTION, PARAGRAPH 167, TARIFF ACT OF 1913—"PLATED."

The last clause of paragraph 167, tariff act of 1913, taxing articles or wares of certain metals when not plated with gold or silver, excludes from its operation not only such articles as are entirely plated but also such as have a substantial portion of their surfaces plated, and relegates them to the provision in the same paragraph for articles or wares plated with gold or silver.

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3. GOLD OR SILVER PLATED HAND BAG OR PURSE FRAMES, HOW DUTIABLE.

Hand bag or purse frames with a substantial portion of their surfaces plated with gold or silver are dutiable under the first clause of paragraph 167, tariff act of 1913, as "articles or wares plated with gold or silver" at 30 per cent ad valorem, and not under the last clause as metal articles not plated with gold or silver at 20 per cent ad valorem.

4. WARES IN CHIEF VALUE OF GLASS, WITH GOLD OR SILVER PLATED TRIMMING, HOW DUTIABLE.

Penholder racks or stands in chief value of glass, with gold or silver plated metal rims, are dutiable as manufactures of glass, under paragraph 95, tariff act of 1913, and not as gold or silver plated metal articles under paragraph 167.

United States Court of Customs Appeals, March 28, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7761 (T. D. 35608).

[Modified.]

Walden & Webster (*Henry J. Webster of counsel*) for appellants.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This case presented issues under three protests, 756830, 761249, and 760046. The first two of these protests were declared insufficient by the board on the ground that each was multifarious. Inasmuch, however, as it now appears that the importers were mistaken in supposing that the articles involved in 756830 were imported, the evidence showing that they were in fact short in the shipment and not received in the commerce of the country, no discussion of that protest is required.

As to protest No. 761249, it is claimed by the Government that this is invalid because of multifariousness. We find, however, upon examination of the record that no such point was made before the board, and it appears that the board was under a misapprehension as to the state of the record in that respect, for, after deciding that in their view protest 761249 should be overruled on the ground that it was multifarious and insufficient, they say, "there does not, however, appear to be any objection raised concerning the sufficiency of protest No. 760046," and then proceed to consider this protest upon the merits.

It is now pointed out that the record in protest 761249 was in the same condition; that no objection to the protest was made by the Government, and that the return of the collector indicates that the issue sought to be here litigated was sufficiently presented to enable him to make proper return. The question is therefore presented whether under these circumstances the board should have, without objection, dismissed the case for multifariousness.

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We had before us in Fuld *v.* United States (4 Ct. Cust. Appls., 234; T. D. 33476) the question of whether the objection for multifariousness could be waived. In that case return had been made by the collector, the case submitted to the board and decided, and on appeal to this court the Government for the first time raised the question of the sufficiency of the protest, claiming it to be invalid for multifariousness. The court held that the objection for multifariousness was one that did not go to the jurisdiction of the subject matter, and that the court would not "*sua sponte* or on a complaint first made to the appellate tribunal review a decision which relates to the form of a pleading which appears to have been good enough to enable all parties to act upon it intelligently."

The only distinction between that case and this is that the board there failed to hold the protest insufficient, while in this case it assumed to do so (evidently under a misapprehension) when there had been no objection and the case had been submitted for decision on the protest and return of the officer, and upon testimony. We think it is no more open to the board to act *sua sponte* under these circumstances than it was for this court to do so in United States *v.* Fuld.

We come, therefore, to a consideration of the case upon its merits. First taking up protest 760046, the merchandise in that case consists of metal frames for hand bags, on some of which the knobs or catches, as well as the rings and clasps, are plated with gold or silver, as are the lower portions where the hinges are located. These were assessed as plated articles under paragraph 167 of the act of 1913, which reads as follows:

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

As to the extent of the plating, it appears that these frames are imported for use in making silk purses. When used for this purpose, all the exposed portion of the frame is plated. The contention of the importer is that the article is plated in but a small portion of its surface, and that the provisions of paragraph 167 do not cover such an article.

We are dealing now with a metal article exclusively, and paragraph 167, as it applies to metal articles, first covers "articles or wares plated with gold or silver." Secondly, it provides for metal articles of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, "but not plated with gold or silver," at the lower rate

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of 20 per cent. In determining, therefore, the classification of a metal article, it must be kept in mind that the purpose of the latter clause of this paragraph is to fix the rate of duty for such metal articles and that the intent is clear to exclude from them any such metal article plated with gold or silver. In order to exclude metal from the latter portion of this paragraph, and fix its status as dutiable under the former portion, it is not necessary to show that the whole surface is plated or that any particular percentage of the surface is plated. It is enough that there is a substantial portion of the article plated. See on this point T. D. 25599 and cases cited. We think, therefore, that the board was right in holding that these bag frames were dutiable as assessed.

The articles covered by protest 761249 consist of penholder racks or stands made of glass, about 4 inches high and 2 inches square at the bottom and 1 inch square at the top, composed entirely of glass, except for a gold or silver plated metal rim about 1½ inches square, and one-fourth inch wide at the top. We think a different view should be taken of this importation. We have here a metal rim which is applied to a glass holder, the glass being of chief value. The metal article itself would of course if imported separately be dutiable at the rate fixed by paragraph 167, but it is only a part and a relatively small part of the importation as it comes into the commerce of the country. The article as imported can hardly be said to be a plated article. It has a small portion of its surface to which a plated article has been attached, but this is of minor value. The component of chief value is glass, and we think the glass stands in question here properly dutiable under paragraph 95.

The decision is *modified* accordingly.

(T. D. 36309.)

Marble font and seats—Works of art.

UNITED STATES *v.* OLIVOTTI & Co. (No. 1605).

1. SCULPTURE—DEFINITION.

A work is not necessarily sculpture because artistic and beautiful and fashioned by a sculptor from solid marble. Sculpture as an art is that branch of the free fine arts which chisels or carves out of stone or other solid material or models in clay or other plastic substance, for subsequent reproduction by carving or casting, imitations of natural objects, chiefly the human form, and represents such objects in their true proportions of length, breadth, and thickness, or of length and breadth only.

2. WORK OF ART—DEFINITION.

"Works of art" in paragraph 376, tariff act of 1913, does not cover the whole range of the beautiful and artistic, but only those productions of the artist which are something more than ornamental and decorative and which

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may be properly ranked as examples of the free fine arts, or, possibly, that class only of the free fine arts imitative of natural objects as the artist sees them, and appealing to the emotions through the eye alone.

3. SCULPTURAL DECORATIONS OF UTILITARIAN ARTICLES.

Utilitarian articles do not become sculpture by reason of being adorned by the carving of a sculptor, unless the sculptural decorations be so compelling that the utilitarian achievement of the artisan is lost in the realized sentiment of the artist.

4. MARBLE FONT AND SEATS WITH ARTISTIC CARVINGS, HOW DUTIABLE—MANUFACTURES OF MARBLE.

A marble font and marble seats, the work of a sculptor and incidentally embellished by him with artistic carvings, are not sculpture or works of art under paragraph 376, tariff act of 1913, but manufactures of marble under paragraph 98.

United States Court of Customs Appeals, March 28, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38064.

[Reversed.]

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

Churchill, Marlow & Hines for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

A marble font, two marble boxes and stands, and two marble seats imported at the port of New York were classified by the collector of customs as manufactures of marble, and were accordingly assessed for duty at 45 per cent ad valorem under that part of paragraph 98 of the tariff act of 1913 which reads as follows:

98. Marble, breccia, onyx, alabaster, and jet, wholly or partly manufactured into monuments, benches, vases, and other articles, or of which these substances or either of them is the component material of chief value, * * * not specially provided for in this section, 45 per centum ad valorem.

The importers protested that the several articles which were so classified and assessed by the collector were dutiable at 15 per cent ad valorem under the provisions of paragraph 376 of said act, which said paragraph reads as follows:

376. Works of art, including paintings in oil or water colors, pastels, pen-and-ink drawings, or copies, replicas or reproductions of any of the same, statuary, sculptures, or copies, replicas or reproductions thereof, and etchings and engravings, not specially provided for in this section, 15 per centum ad valorem.

It appeared from the testimony introduced by the importers that the boxes and stands were original works of art, and in accordance with that testimony the Board of General Appraisers ruled that they were classifiable under paragraph 652, rather than under paragraph 376, as claimed in the protest. Because of the failure to make the proper claim the protest as to the marble boxes and stands was overruled by the board, and no appeal having been taken by the importers

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from that ruling no review can be had in the present proceeding of that particular part of the board's decision.

The board held that the marble font and marble seats were works of art within the meaning of paragraph 376 as interpreted by the board in the matter of the protest of Downing & Co. (T. D. 35564). In that case the board decided that if the so-called Greek temple there involved was a work of art at all it was such by reason of the fact that it was a sculpture, and from that we assume that the board must have concluded that the marble font and seats here in controversy were sculptures, and therefore held them to be works of art and dutiable under paragraph 376 apparently because they were copies of original sculptures not provided for in paragraph 652.

From the decision of the board the Government appealed and now contends that its appeal should be sustained on the ground that the font and marble seats are not sculptures at all, and that they are not works of art as that term is used in paragraph 376.

It appears from the photographs in evidence that the font is a plain marble basin, supported by a long, slender, tapering column, which is sustained by a short, round pillar of smaller diameter. The short pillar springs from an annular base which rests on a plain square slab of marble. The surface of the long, tapering column is ornamented by carvings suggestive of leaves. The font was made by Molonari, a sculptor, and was copied by him from an original found in one of the churches of Italy; but whether the original was the work of a sculptor does not appear. The production is the work of a sculptor. It is fashioned from the solid marble. It may be conceded that it is artistic and beautiful. Nevertheless, those conditions, or, better said, those distinguishing features of the article, are not sufficient of themselves to constitute a sculpture. Sculpture as an art is that branch of the free fine arts which chisels or carves out of stone or other solid material or models in clay or other plastic substance for subsequent reproduction by carving or casting, imitations of natural objects, chiefly the human form, and represents such objects in their true proportions of length, breadth, and thickness, or of length and breadth only. Standard Dictionary; Century Dictionary; United States *v.* Downing & Co. (6 Ct. Cust. Appls., 545; T. D., 36197); Stern *v.* United States (3 Ct. Cust. Appls., 124, 126; T. D. 32381); United States *v.* Baumgarten (2 Ct. Cust. Appls., 321, 322; T. D. 32052). It can not be said that the font, considered as an entirety, portrays any natural object. The surface of the tapering column which supports the plain marble basin is carved, it is true, with a representation suggestive of leaves, but that representation is so plainly ornamental and so clearly incidental that it can scarcely be regarded as sculpture and much less as giving that status to the whole article. Indeed, as appears from the photograph in

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evidence and the testimony in the case, that which makes the font artistic and beautiful is the purity of its lines and its just proportions, *and not the carving on the column*, which we think must be regarded at best as decorative and not sculptural art.

Finding, as we do, that the font is not sculpture, the next question which arises is, Can it, because of its beauty and artistic character, be classified as a work of art within the meaning of paragraph 376? We think not. In our opinion, the expression "works of art" as used in paragraph 376 was not designed by Congress to cover the whole range of the beautiful and artistic, but only those productions of the artist which are something more than ornamental or decorative and which may be properly ranked as examples of the free fine arts, or possibly that class only of the free fine arts imitative of natural objects as the artist sees them, and appealing to the emotions through the eye alone. The potter, the glassmaker, the goldsmith, the weaver, the needlewoman, the lace maker, the woodworker, the jeweler, all produce things which are both artistic and beautiful. It can hardly be seriously contended, however, that it was the legislative purpose to include such things, beautiful and artistic though they may be, in a provision which, as shown by its history and the enumeration therein contained, was intended to favor that particular kind of art of which painting and sculpture are the types. See Lazarus *v.* United States (2 Ct. Cust. Appls., 508, 509; T. D. 32247); United States *v.* Downing (6 Ct. Cust. Appls., 545; T. D., 36197).

That everything artistic and beautiful can not be classed as fine art was well established in United States *v.* Perry, which involved the classification of painted glass windows on which were represented by artists of superior merit pictures of the saints and other biblical subjects. In that case it was held by the Supreme Court that the windows were not paintings and that, although they were artistic in the sense that they were beautiful, they were representative of the decorative and industrial rather than of the fine arts. United States *v.* Perry (146 U. S., 71, 74).

Inasmuch as we find that the font is not sculpture and not a work of the fine arts, we think that it is not dutiable under paragraph 376 as found by the board.

The marble seats or chairs in controversy are copies of a Grecian original found in the Vatican museum, and, as appears from the record, were made by Molonari, a sculptor. The ends of the arm rests of the seats are carved into the form of lions' heads, which are sustained by supports terminating in what appear to be carved lions' paws. These carvings, even if they could be regarded as demanding the exercise of sculptural art, were evidently designed as an embellishment of the seats, and it would be going far to say that of themselves they were sufficient to give the character of sculptures

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to the entirety of which they are a minor, not a predominating, part. It may be conceded for the purposes of this case that because of the sculptural work upon them, the articles under consideration have an artistic beauty which otherwise they would not possess. Nevertheless, no one gazing upon them can forget that they are seats or chairs and that they are not the expression of the sculptor's impulse to imitate some object in nature as he conceived it to be, but a conception brought to material form primarily and principally to serve a useful purpose, and not to please. The making of seats and chairs is strictly industrial, not sculptural, art; and when the sculptor's hand is called upon to make such conveniences artistic and beautiful, his work reaches no higher plane than the purely decorative, unless it be so compelling that the utilitarian achievement of the artisan is lost in the realized sentiment of the artist. United States *v.* Baumgarten (2 Ct. Cust. Appls., 321, 323–324; T. D. 32052); Lazarus *v.* United States (2 Ct. Cust. Appls., 508, 511; T. D. 32247); Consmiller *v.* United States (3 Ct. Cust. Appls., 298, 301; T. D. 32585). The seats here involved were not designed to serve as mere settings for whatever of sculptural work there may be upon them, but as seats to which such sculptural work clearly bears the relation of adornment and nothing more. They must, therefore, be classed as articles of utility produced by industrial art because of a sense of need or usefulness and not as sculptures or examples of fine art the activities of which are chiefly, if not wholly, called into play by sentiment and for the purpose of appealing to the emotions.

As we are of opinion that the carved marble seats are not sculptures or works of art within the intention of paragraph 376, we must hold that they are not dutiable as found by the board, and that the assessment of the collector should be sustained.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 36310.)

Platinum and iridium wire.

BOSCH MAGNETO CO. *v.* UNITED STATES (No. 1612).

1. PLATINUM AND IRIDIUM, COMBINATIONS OF.

Wire of platinum and iridium is not admissible free of duty under paragraph 517, tariff act of 1913. It is an artificial combination, while the call of the paragraph is for native combinations only.

2. PLATINUM IN WIRE—PLATINUM WIRE.

Platinum in wire is not the same thing as platinum wire. Platinum in wire is a *metal* in a certain form, and can contain no substantial quantity

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of any other metal. Platinum wire is an *article*, and the record shows that it usually contains a substantial quantity of iridium. Platinum in wire describes a *material—platinum*.

3. WIRE OF PLATINUM AND IRIDIUM, HOW DUTIABLE.

Wire, 80 per cent platinum and 20 per cent iridium, is not admissible free of duty under paragraph 578, tariff act of 1913, as "platinum * * * in wire," notwithstanding its commercial designation as platinum wire. It is dutiable under paragraph 114 as "all other wire not specially provided for."

United States Court of Customs Appeals, March 28, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7762 (T. D. 35627).

[Affirmed.]

Harvey T. Andrews for appellant.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The importation was of wire. It is undisputed that it is composed of about 80 per cent platinum and about 20 per cent iridium. It was classified for dutiable purposes under that provision of paragraph 114 of the tariff act of 1913 which provides for "all other wire not specially provided for in this section." The importers made protest, claiming the merchandise free of duty either under paragraph 517 or paragraph 578 of the said act. These paragraphs enact:

517. Iridium, osmium, palladium, rhodium, and ruthenium and native combinations thereof with one another or with platinum.

578. Platinum, unmanufactured or in ingots, bars, plates, sheets, wire, sponge, or scrap, and vases, retorts, and other apparatus, vessels, and parts thereof, composed of platinum, for chemical uses.

Moved by the commendable industry and learning displayed by counsel for the importers, appellants, we have not without careful thought arrived at the conclusion herein opposing the views so well asserted.

Appellants produced testimony to show that there was in trade and commerce in this country an article generally and uniformly known as "platinum wire." A great preponderance of the testimony showed that the article classified by the trade as platinum wire contained from 1 to 25 per cent of iridium; that the iridium was much the more valuable metal. No serious contention was made by the protestants that the article was free of duty under paragraph 517. The language of that paragraph plainly excludes this merchandise.

The board of general appraisers found as a fact that there was not sufficient testimony establishing an *eo nomine* trade designation of platinum in wire, and concluded, as a matter of law, that the trade designation of platinum wire did not respond to the call of the

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statute for platinum in wire. See also Seligmann *et al.* *v.* United States (6 Ct. Cust. Appls., 85; T. D. 35336). The board read the provisions of paragraph 578, as providing for a description of platinum in various forms, including the form of wire. The board also, and we think properly, differentiated the case of the General Electric Co. *v.* United States (4 Ct. Cust. Appls., 398; T. D. 33839), which related to similar materials. In that case the merchandise consisted of a wire composed of platinum and nickel in two separate parts. It was composed of an outside sleeve of platinum with a nickeliferous core. It was, therefore, rather wire in platinum than platinum in wire. In this case the iridium and platinum are melted together. We think that the Congress did not intend to use the words "platinum * * * in * * * wire" in a commercial sense, and that reading the two paragraphs, 517 and 578, together this congressional purpose is made obvious. Paragraph 517 provides only for iridium and platinum metals in native combinations. This article is an artificial combination. Likewise, it is clearly manifest that while Congress, by paragraph 517, has provided free entry for iridium it is only in its native state and not in a manufactured condition, as, for example, when in the form of wire.

The particular phrase is for "platinum * * * in * * * wire." This is not a provision either per force the language used or the associate legislative context for a *wire* but for a *metal*, levying duty upon that metal when imported unmanufactured or in any of the prescribed forms, to wit, when in the *form* of "ingots, bars, plates, sheets, *wire*, sponge, or scrap." This is not a provision for "platinum wire." The phrase is a precise provision for a metal when found in a certain form. Such obviously is not a commercial but a descriptive term. Platinum wire is an *eo nomine* designation of a kind of wire. That they do, and how they may, differ is herein demonstrated. Platinum wire, as stated, is a well-known article of trade which usually contains from 1 to 25 per cent in volume of iridium. Such merchandise responds in the trade to the call of "platinum wire." But this record shows that the value of the two metals, platinum and iridium, in this wire are of about equal value, the latter being relatively the more valuable per unit of weight. It is not beyond this record to say that the iridium may be the more valuable of the two in such wire. We could no more say then that this is "platinum * * * in * * * wire" than we could say that it is iridium in wire. The naked truth is that it is neither, but is platinum *and* iridium in wire or in the form of wire. In order to be platinum (metal) in the form of wire or in any other prescribed form, or unmanufactured, clearly it must contain no substantial quantity of other metal. General Electric Co. *v.* United States, *supra.* What Congress here has made free of duty is the

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metal platinum in the form of wire, to respond to the call of which the imported merchandise should be descriptively substantially wholly of platinum. The article known in, or rather claimed by, trade and commerce as platinum wire, as shown by this record, is not such in that it is composed in a substantial part of iridium in a manufactured form to which Congress has not extended the privilege of free entry. Any other construction defeats the apparent legislative purpose, in that while Congress has (par. 517) accorded free entry to iridium only when in native combinations with platinum, the claimed construction accords it free entry also when in artificial combinations with platinum.

Affirmed.

(T. D. 36311.)

Children's paint boxes—Artists' colors.

ILLFELDER & CO. *v.* UNITED STATES (No. 1580).

1. "WATER COLOR BOXES," HOW DUTIABLE.

Merchandise consisting of small boxes containing water colors of good quality and articles incidental to their use, designed, adapted, and used for elementary instruction in art and used to some extent also by artists, is not dutiable as toys under paragraph 342, tariff act of 1913, but as artists' paints or colors under paragraph 63.

2. CONSTRUCTION—DOUBT FAVORS IMPORTER.

All other things being equal the importer is entitled to the benefit of the doubt.

3. TOY, WHAT IS NOT.

An article designed, adapted, and used for serious instruction, no matter how elementary, and not for the amusement of children at play, is not a toy.

United States Court of Customs Appeals, March 28, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37852.

[Reversed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The present importations consist of small wooden boxes containing water colors, crayons, brushes, and drawing materials, and are called water-color boxes.

The collector classified these as toys, and accordingly assessed duty thereon at 35 per cent ad valoreum under paragraph 342 of the tariff act of 1913.

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The importers protested against the assessment, claiming the goods to be dutiable at 15 per cent ad valorem as paints or colors under the first clause of paragraph 63 of the same act; or alternately at 20 per cent ad valorem as artists' paints or colors, or as color lakes under the second or third clause of the paragraph. In their petition in this court the importers rely upon the claim that the merchandise is dutiable at 20 per cent ad valorem under the provision of paragraph 63 aforesaid for "all paints, colors, and pigments commonly known as artists' paints or colors, whether in tubes, pans, cakes, or other forms."

The protest was submitted upon testimony to the Board of General Appraisers, and was overruled. The importers appeal.

The two paragraphs which are thus drawn into question read as follows:

63. Enamel paints, and all paints, colors, pigments, stains, crayons, including charcoal crayons or fusains, smalts, and frostings, and all ceramic and glass fluxes, glazes, enamels, and colors, whether crude, dry, mixed, or ground with water or oil or with solutions other than oil, not specially provided for in this section, 15 per centum ad valorem; all paints, colors, and pigments commonly known as artists' paints or colors, whether in tubes, pans, cakes, or other forms, 20 per centum ad valorem; all color lakes, whether dry or in pulp, not specially provided for in this section, 20 per centum ad valorem.

342. Dolls and parts of dolls, doll heads, toy marbles of whatever materials composed, and all other toys and parts of toys not composed of china, porcelain, parian, bisque, earthen, or stone ware, and not specially provided for in this section, 35 per centum ad valorem.

As has been stated, the collector assessed the present articles as toys, and the board sustained the assessment, whereas the importers claim that the articles are not toys but are artists' paints or colors.

The articles in question consist of brightly painted wooden boxes, about 10 inches in length, 6 inches in width, and 2 inches in depth, divided into compartments containing 18 small cakes of water colors, a number of colored crayons, a lead pencil, a small rule, some blotting paper, a small hairbrush, and several glass and metal receptacles for holding water or for mixing the colors. The boxes are labeled "colours free from poison." A small printed pamphlet is held in the box by means of an elastic, containing certain advertising matter together with several sketches. The sketches are in duplicate, one being in black and white, the other being in colors. The evident purpose of these is to have the colored sketch serve as a model for the painting of the similar black and white ones. The boxes retail at about $2 apiece.

A number of witnesses testified at the trial before the board, and in some particulars it might be wished that the testimony were more complete and specific. However, it was stated that the outfits are known as "water-color boxes," and that the paints contained therein

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are of the same quality as those used by artists. It was stated that the present cakes are too small and the brush too flimsy for use by "master artists," but that such outfits are, in fact, used by beginners in painting, and may be found in almost every public school where art is taught. It was also stated that the outfit is particularly designed for the use of children in schools who have in view taking up a course in art. It was said by one of the witnesses that "not infrequently I see girls that come in to take lessons—you know, they do work at home—they not infrequently have outfits of this type in their portfolios, and they use them in a practical way." The witness also stated that the articles are "principally designed for children, children who have in view taking up a course in art." Another witness testified that the present outfits are used by adults as well as by children, adding, "I have used them myself * * * making up illustrations, sometimes make up new designs for toys or articles I want to get up. * * * I have used them with a stock just like these here." It was also stated by one of the witnesses that the articles are generally handled by the artists' materials and stationery departments of department stores.

Upon the other hand the Government examiner testified that the articles are suitable for the amusement of children as toys, although "school children may use them"; that they are principally imported by toy dealers, that is to say, by people who deal to a greater or less extent in toys; that the importations now in question were in fact invoiced by the manufacturer as "toy boxes." It appears from the examiner's testimony that for a period of 20 years preceding this case outfits like the present ones were returned for duty as artists' colors, and not as toys. It may be assumed that during that period the articles were assessed with duty according to these returns. The examiner explained that this course was followed because of a former board decision which drew a line of demarcation in respect to such outfits according to their price, those whose price exceeded a certain sum being returned as artists' colors, and those having a smaller price being returned as toys. This practice was abandoned under the present act because of later decisions of the board and of this court which held that price alone was not necessarily determinative in the classification of such articles, but that their character and use must likewise be considered. G. A. 7251 (T. D. 31786); United States *v.* Kraemer & Co. (5 Ct. Cust. Appls., 294; T. D. 34474).

Upon the testimony, including the exhibits, keeping in mind also the rule that all other things being equal, the importer is entitled to the benefit of the doubt, we reach the conclusion that the present articles are "reasonably fitted" for other uses than that of toys, namely, for use as a means of serious instruction for beginners in the study of art, and also for making up illustrations for new de-

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signs of toys or other articles, as stated by one of the witnesses above quoted. As a result of this conclusion we hold that the articles are not dutiable as toys, but are dutiable as artists' paints or colors. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115).

It may be noted that the use which is made of the present outfits for the instruction of beginners in art differs from the use which is made of toys in kindergarten schools, for in such schools children engage in various sports and games by means of the same toys as those used in their sports outside of school, whereas the present articles are used in schools as a means of instruction not by way of sport or game but in quite as serious a manner as any other mode of instruction, even if less advanced. United States *v.* Meier & Frank (5 Ct. Cust. Appls., 208; T. D. 34330).

The collector's assessment and the board's decision sustaining the same are therefore reversed, and reliquidation is ordered at the rate of 20 per cent ad valorem, as claimed by the importers' protest.

Reversed.

(T. D. 36312.)

Dressed goose skins covered with down.

Dressed goose skins covered with down dutiable at the rate of 40 per cent ad valorem as downs on the skin, advanced or manufactured, not suitable for use as millinery ornaments, under paragraph 347, tariff act of 1913.

TREASURY DEPARTMENT, *April 10, 1916.*

SIR: The department is advised that it has been the practice to assess duty on dressed goose skins covered with down at the rate of 30 per cent ad valorem as furs dressed on the skin, by similitude, following T. D. 31410, but that it is proposed to change the classification to that of downs on the skin, advanced or manufactured, not suitable for use as millinery ornaments, dutiable at 40 per cent ad valorem under paragraph 347 of the tariff act of 1913.

In T. D. 31410 the Court of Customs Appeals held under the act of 1897 that dressed goose skins with the down on were expressly excluded from paragraph 425 of that act, as the feathers had been removed. The paragraph in question reads as follows:

Paragraph 425, act of 1897.

Feathers and downs of all kinds, including bird skins or parts thereof with the feathers on, crude or not dressed, colored, or otherwise advanced or manufactured in any manner, not specially provided for in this act, fifteen per centum ad valorem; when dressed, colored, or otherwise advanced or manufactured in any manner, including quilts of down and other manufactures of down, * * * fifty per centum ad valorem.

The corresponding provision of paragraph 347 of the present act reads, in part, as follows:

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Paragraph 347, act of 1913.

Feathers and downs, on the skin or otherwise, crude or not dressed, colored, or otherwise advanced or manufactured in any manner, not specially provided for in this section, twenty per centum ad valorem; when dressed, colored, or otherwise advanced or manufactured in any manner, and not suitable for use as millinery ornaments, including quilts of down and manufactures of down, forty per centum ad valorem * * *.

By reason of the change in phraseology, it appears that the articles in question are specifically covered by paragraph 347 of the tariff act of 1913, and the department concurs in the proposed change of classification.

You will, therefore, assess duty on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof at the rate of 40 per cent ad valorem as downs on skins, advanced or manufactured, not suitable for use as millinery ornaments under paragraph 347 of the tariff act of 1913.

However, the prohibition of paragraph 347 of the tariff act against the importation of feathers, quills, heads, wings, tails, skins, or parts of skins, etc., of wild birds not for scientific or educational purposes should be observed.

Respectfully, WM. P. MALBURN,
(96009.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36313.)

Drawback on Kolynos dental cream.

T. D. 34769 of September 18, 1914, extended to cover Kolynos dental cream packed and sealed in imported collapsible tubes.—T. D. 31198 of January 14, 1911, revoked.

TREASURY DEPARTMENT, *April 13, 1916.*

SIR: The department regulations of September 18, 1914 (T. D. 34769), providing for drawback on "Kolynos dental cream" manufactured by the Kolynos Co., of New Haven, Conn., with the use of domestic tax-paid alcohol and various imported materials, are hereby extended to cover such dental cream packed and sealed in imported collapsible tubes.

The allowance shall not exceed one imported collapsible tube of the size used for each sealed tube of Kolynos dental cream exported.

The sworn statement of the manufacturers, dated March 27, 1916, is transmitted herewith for filing in your office.

T. D. 31198 of January 14, 1911, is hereby revoked.

Respectfully, WM. P. MALBURN,
(67918.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36314.)

Drawback on insulated wire and cable.

Drawback on insulated wire and cable manufactured by the Safety Insulated Wire & Cable Co., of New York, N. Y., with the use of imported wire and lead.

TREASURY DEPARTMENT, *April 13, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on insulated wire and cable manufactured by the Safety Insulated Wire & Cable Co., of New York, N. Y., with the use of imported wire or with the use of imported wire and lead.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated March 25, 1916, transmitted herewith, which will show, in the case of each lot of insulated wire or cable manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the character, weight, and dimensions of the article produced, and the quantities, character, and identity of the imported materials appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantities of imported materials appearing in the insulated wire or cable exported, as shown by the abstract from the manufacturing record.

Supplemental sworn statements may be filed showing the use of other imported materials in the manufacture of insulated wire or cable, and upon verification of such supplemental statements drawback may be allowed on insulated wire and cable manufactured with the use of the imported materials described therein.

Respectfully, WM. P. MALBURN,
(72672.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36315.)

Drawback on pianos and player pianos.

Drawback on pianos and player pianos manufactured by William Tonk & Bro. (Inc.), of New York, N. Y., with the use of various imported materials.—T. D. 30654 of May 31, 1910, and T. D. 32707 of July 13, 1912, revoked.

TREASURY DEPARTMENT, *April 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on pianos and player

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pianos manufactured by William Tonk & Bro. (Inc.), of New York, N. Y., with the use of imported tuning pins, piano wire, piano actions, and sconces.

The allowance shall not exceed the quantity of imported material of each kind appearing in the exported pianos and player pianos, as shown by the sworn statement of the manufacturers, dated March 30, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn statements showing the use of other imported materials or changes in the quantities of imported materials used in the manufacture of the above-named articles may be filed, and upon verification of such supplemental statements drawback may be allowed on the pianos and player pianos covered thereby.

T. D. 30654 of May 31, 1910, and T. D. 32707 of July 13, 1912, are hereby revoked.

Respectfully, WM. P. MALBURN,
(75135.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36316.)

Drawback on human hair.

Drawback on raw human hair exported after having been combed, washed, refined, bleached, and dyed by the Manhattan Hair Goods Co., Paisner Bros., the Boston Human Hair Co., or the Russian Human Hair Co., of New York, N. Y., for the account of the B. Frankel Co. (Inc.), of New York, N. Y., or others.

TREASURY DEPARTMENT, *April 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on imported human hair exported after having been combed, washed, refined, bleached, and dyed by the Manhattan Hair Goods Co., Paisner Bros., the Boston Human Hair Co., and the Russian Human Hair Co., of New York, N. Y., for the account of the B. Frankel Co. (Inc.), of New York, N. Y., or others.

A record shall be kept by each of the manufacturers, which will show, in the case of each lot of imported human hair manufactured, the owner's lot number and the order number thereof, for whom manufactured, the date of receipt, the date of manufacture, and the date of return, the net weight of the hair as received, the net weight and color of the finished product, and the quantities of valuable and valueless waste resulting.

The owner of the imported human hair shall assign to each imported lot a serial lot number, and shall keep a record showing in connection with each lot the net weight thereof, the number of the

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import entry, by whom imported, the name of the importing vessel, when imported, where imported, whence imported, by whom manufactured, the date of delivery of the imported raw human hair, the date of return of the finished product, the value of the imported hair, and the value of the waste resulting. Each lot of imported hair and the finished product thereof shall be handled, marked and stored in such manner that the owner's lot number thereof will at all times be known. Sworn abstracts from the above records shall be filed with the drawback entry.

Prior to exportation, each owner of imported human hair to be manufactured in the manner described by the above-named manufacturers shall file with the collector of customs a sworn statement, agreeing to keep the records and to maintain the identity of the imported hair and finished product in the manner required by these regulations. Such statement shall be verified prior to payment of any drawback to the owner making the same.

In liquidation, the quantity of imported human hair which may be taken as a basis for the allowance of drawback shall not exceed the quantity used in the manufacture of the exported product, as shown by the abstracts from the records provided for above, the allowance for waste to be reduced according to the quantity of imported human hair which the value thereof will replace.

Sworn statements of the B. Frankel Co. (Inc.), the Manhattan Hair Goods Co., the Boston Human Hair Co., the Russian Human Hair Co., and Paisner Bros., dated March 10, 24, and 25, 1916, are transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(104597.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36317.)

Drawback on cigarettes.

Drawback on cigarettes manufactured by Yak Oussani & Co., of New York, N. Y., with the use of wholly imported Turkish leaf tobacco.—T. D. 30522 of April 11, 1910, revoked.

TREASURY DEPARTMENT, *April 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarettes designated as "Egyptian King," manufactured by Yak Oussani & Co., of New York, N. Y., with the use of wholly imported Turkish leaf tobacco.

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The allowance shall not exceed the net weight of the tobacco appearing in the exported cigarettes, as shown by the sworn statement of the manufacturers, dated March 18, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules covering other brands of cigarettes may be filed, and upon verification of such supplemental schedules drawback may be allowed on the cigarettes covered thereby.

T. D. 30522 of April 11, 1910, is hereby revoked.

Respectfully, WM. P. MALBURN,
(72155.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36318.)

Drawback on cables, sleeves, and pipes.

Drawback on lead-covered cables, sleeves, and pipes manufactured by the Standard Underground Cable Co., of Perth Amboy, N. J., Pittsburgh, Pa., and Oakland, Cal., with the use of imported pig lead.

TREASURY DEPARTMENT, *April 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on lead-covered cables, sleeves, and pipes manufactured by the Standard Underground Cable Co., of Perth Amboy, N. J., Pittsburgh, Pa., and Oakland, Cal., with the use of imported pig lead.

A manufacturing record shall be kept at each of the factories of the company, which will show, in the case of each lot of lead-covered cable, sleeves, and pipes manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the character and quantity (dimensions and net weight) of the articles produced, and the quantity and identity of the imported pig lead appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported lead appearing in the exported articles, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated March 3, 1916, is transmitted herewith for filing in your office.

The above regulations shall supersede all other instructions and regulations covering products manufactured by the Standard Underground Cable Co.

Respectfully, WM. P. MALBURN,
(45768.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36319—G. A. 7884.)

Pictures printed with oil on cotton cloth by mechanical process.

Pictures printed with oil on cotton canvas by a secret mechanical process are not "printed matter" within the common meaning of that term as used in paragraph 329, tariff act of 1913, but are dutiable as "manufactures of cotton" at 30 per cent ad valorem under paragraph 266.

United States General Appraisers, New York, April 11, 1916.

In the matter of protest 781456 of American Express Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Importers not represented by counsel.

Bert Hanson, Assistant Attorney General (*Frank P. Wilson*, special attorney, of counsel), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

COOPER, *General Appraiser:* The merchandise covered by this protest is reported by the appraiser to be lithographic reproductions of a painting on canvas and it was classified as "manufactures of cotton" at 30 per cent ad valorem under paragraph 266 of the act of 1913. The importers claim that the merchandise is dutiable at 15 per cent ad valorem under paragraph 329. The protest does not state under what provision in the paragraph the claim is made, but as the case of the Baltimore Publishing Co., G. A. 425 (T. D. 10930), holding certain printed scapularies dutiable as printed matter, is cited as authority, the importers evidently rely upon the claim that the articles in question are dutiable as printed matter.

At the trial a witness for the importers testified that these pictures are printed with oil by a secret mechanical process, and it is therefore evident that they are printed and not lithographed, as reported by the appraiser. There is no doubt but that the provision for "printed matter" is more specific than the provision for "manufactures of cotton," but there is some question as to whether or not the merchandise is "printed matter" within the common meaning of that term.

In the case of Forbes Lithograph Manufacturing Co. *v.* Worthington (25 Fed., 899), the court held that "printed matter," in its ordinary meaning, was a paper, or some other like substance commonly used for the purpose, printed in the ordinary or usual way, and iron show cards printed on plates of sheet iron from lithographic stones were held not to be dutiable as printed matter. The court, after quoting from Maillard *v.* Lawrence (16 How., 261) that "the popular or received import of words furnishes the general rule for the interpretation of public laws as well as on private and social transactions," said:

Applying this rule to the expression "printed matter" it must be held that Congress used it in its popular sense—in its common acceptation, as it was understood

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in the community at large; and, if so, there can be included in it only such matter as is generally known as "printed matter."

This decision was affirmed on appeal to the United States Supreme Court (132 U. S., 655), not on the grounds expressed by the lower court but for the reason that the articles were not *ejusdem generis* with the other articles in the paragraph. The Supreme Court did not comment on the ruling of the lower court that the term "printed matter" in the tariff is limited to such merchandise as is commonly designated as such, printed in the usual and ordinary way, and no case has been brought to our attention contra to this view.

Another case in which it was held that the term "printed matter" was not intended to cover all printed articles is *In re* Kraut, G. A. 5606 (T. D. 25087), affirmed without opinion in Kraut *v.* United States (134 Fed., 701; T. D. 25829, and 142 Fed., 1037; T. D. 26946), wherein the board held that the paper bags elaborately printed with advertising matter relating to the goods intended to be packed and sold within them were not "printed matter" within the meaning of paragraph 403 of the act of 1897.

In the case of the American Express Co., G. A. 7643 (T. D. 34929), certain lithographic prints of oil paintings on cotton cloth were held dutiable as manufactures of cotton; but in that case no claim was made that the articles were dutiable as printed matter, and that point was not covered by the decision.

In the case at bar, the pictures are not printed in the ordinary manner, and they are not of the character of merchandise ordinarily designated as and covered by the term "printed matter," and we hold that they are not dutiable as such under the paragraph named in the protest.

The cases of United States *v.* Deutsch (178 Fed., 272; T. D. 30387) and Ringk *v.* United States (164 Fed., 1021; T. D. 29037), holding post cards printed on paper and ornamented with and in chief value of celluloid, silk, wood, feathers, etc., to be dutiable as printed matter are distinguishable, for such articles are within the class of merchandise commonly manufactured and designated as printed matter.

The protest is overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, APRIL 11, 1916.

No. 39534.—Protest 744074 of Stickley Bros. Co. (Detroit).

ANGORA GOATSKINS.—The hair on merchandise invoiced as Angora goatskins, classified at 15 per cent ad valorem under paragraph 305, tariff act of 1913, is claimed free of duty under paragraph 650.

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Opinion by McClelland, G. A. It was found that the processes used for the removal of the hair from the skins were such as to reduce its value as a marketable product. There being no dispute that the merchandise is Angora goat hair, it was held properly classified under paragraph 305.

No. 39535.—Protest 775157 of John Shillito Co. (Cleveland).

Rugs—Samples.—Samples of rugs returned as parts of carpets woven whole for rooms, classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed free of duty as samples of no commercial value.

Opinion by Brown, G. A. It was found that the merchandise is manufacturers' samples showing qualities and patterns from which to take orders, and that they are disposed of at a comparatively small price. Having a commercial value, they were held dutiable as classified. Badische *v.* United States (4 Ct. Cust. Appls., 374; T. D. 33535) cited.

No. 39536.—Protest 761289–54468 of Carson, Pirie, Scott & Co. (Chicago), and protests 761581, etc., of R. H. Macy & Co. et al. (New York).

Wool Cloth.—Wool cloth and manufactures of wool classified at 35 per cent ad valorem under paragraph 288, tariff act of 1913, are claimed dutiable as blankets at 25 or 30 per cent under paragraph 289.

Opinions by Brown, G. A. Protests unsupported; overruled.

No. 39537.—Protest 783744 of Gimbel Bros. (Philadelphia).

Mohair Pile Fabrics.—Merchandise classified as articles made of pile fabrics composed in chief value of the hair of the Angora goat, at 45 per cent ad valorem under paragraph 309, tariff act of 1913, is claimed dutiable as manufactures of wool at 35 per cent under paragraph 288, or as articles made of pile fabrics composed in chief value of wool, at 40 per cent under the same paragraph.

Opinion by Brown, G. A. Protest unsupported; overruled.

Before Board 2, April 11, 1916.

No. 39538.—Protests 776991, etc., of S. Haas & Co. et al (New York).

Turkish Towels—Bath Mats.—Turkish towels, bath mats, bath blankets, and wash mats or cloths, classified as pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable under paragraph 264, 258, 266, or 252.

Opinion by Cooper, G. A. On the authority of G. A. 7656 (T. D. 35019) the articles in question were held dutiable at 25 per cent under paragraph 264. Protests sustained in part.

Before Board 3, April 11, 1916.

No. 39539.—Protest 791303 of S. R. Harris (Savannah).

Bagging Patches.—Goods invoiced as "old bagging (patches for covering cotton)," classified as waste at 10 per cent ad valorem under paragraph 384, tariff act of 1913, are claimed free of duty under paragraph 408.

Waite, *General Appraiser:* * * * Some testimony was introduced on the part of the importers, and a sample of the merchandise was put in evidence. The sample is a burlap bag about 2 feet wide by 3½ feet long. It is torn in places and is clearly a secondhand bag. It is of a twilled weave and has a dark stained or colored stripe passing around the middle of the bag longitudinally a little less than 2 inches wide. It also has across one end of the bag what appears to be four stenciled letters in black, each letter covering a space about 4 inches in dimension. We take a description of the merchandise from the testimony of the witness for the importers:

Q. Let me ask you this, Do you know of any bagging for cotton?—A. Yes, sir; there is jute bagging, which is an open-mesh bagging, used for upland cotton, short cotton, and there is sea-island bagging, used for sea-island cotton.

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Q. Are they bought old or new?—A. All I have seen of the sea-island bagging comes here brand new.

Q. That is what is known commercially as cotton bagging?—A. Yes, sir.

Q. And these that we are discussing to-day are old sugar bags?—A. Old second-hand sugar bags.

Q. Used for patching?—A. Yes, sir; we store it under that name.

Q. New, these would not be known as cotton bagging?—A. No, sir.

Upon perusal of paragraph 408 it will be seen that it provides for bagging for cotton, gunny cloth, and similar fabrics suitable for covering cotton, composed of single yarns, not bleached, dyed, colored, stained, painted, or printed, and not exceeding 16 threads to the square inch, counting the warp and filling, and weighing not less than 15 ounces per square yard. No evidence was given with reference to the weight of the fabric or the count of threads. A casual inspection would indicate there were more than 16 threads to the square inch and also reveals the fact that the warp is double. Without discussing the question whether paragraph 408 provides for anything but fabrics as distinguished from articles and without deciding whether the classification made by the collector is right or wrong, we conclude that the importers have not made out their case and brought the merchandise within the terms of paragraph 408. We therefore overrule the protest.

No. 39540.—Protest 759343-5214 of West India Sugars Co. (New Orleans).

ENTERED VALUE—MARKET VALUE.

WAITE, *General Appraiser:* There was imported in this case a certain number of gallons of molasses. It was entered at 3.5 cents per gallon and subsequently appraised at 2.5 cents per gallon. The claim of the importers is that duty should have been assessed on the basis of the appraisal. The statute provides that duty shall be assessed upon not less than the entered value except where it shall be directed otherwise by the Secretary of the Treasury under the provisions of paragraph I of section 3, tariff act of 1913.

The claim of the importers is based partially upon the fact that they stated on their entry that the market value of the molasses was less than that at which they entered it. We gather from the record that they entered at 3.5 cents per gallon because of a conversation had with the appraiser wherein the appraiser stated that that would be the price at which he would appraise. It is not shown, and we think it could not be shown in this case, that there were before the general appraisers at the time of entry in this case any previous entries which had been appraised at the higher market value. Appeal for reappraisement was not taken in the case at bar. It rests upon the appraisement made by the local appraiser. One of the contentions of the importers is that the collector was bound to assess duty upon the appraised value. The fact is overlooked that the statute also provides that duty shall not be assessed upon less than the entered value, with the single exception noted above. As stated above, there seems to be a claim that the entry was made on information received from the appraiser at the time of entry. This, however, seems to be disputed in the record, but we do not deem it of any importance so long as duress was not shown nor claimed in the protest. We are of the opinion, therefore, that the collector was bound to assess duty upon the entered value, and we so find. The claim is therefore overruled.

A further claim in the protest for a discount of 5 per cent under subsection 7 of paragraph J of section 4 is overruled as unsupported

No. 39541.—Protest 782335 of Lgi. Balbi & Co., and protest 791194 of A. J. Coccaro (New York).

BEANS IN TINS.—Certain beans in tins are claimed dutiable at 25 cents per bushel under paragraph 197, tariff act of 1913

Opinions by WAITE, G. A. Upon stipulation of counsel that the beans are of the same character and packed in the same manner as those involved in G. A. 7836 (T. D. 36034), they were held dutiable under paragraph 197, as claimed

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BEFORE BOARD 1, APRIL 13, 1916

No. 39542.—Protests 754820, etc., of Lehn & Fink, and protest 798392 of Schieffelin & Co. (New York).

LAVENDER FLOWERS.—Lavender flowers classified at 20 per cent ad valorem under paragraph 49, tariff act of 1913, are claimed entitled to free entry as crude drugs under paragraph 477.

Opinions by MCCLELLAND, G. A. The lavendar flowers in question were held free of duty under paragraph 477. Abstract 39004 followed.

No. 39543.—Protest 756894 of Antoine Chiris Co. (New York).

ALMOND OIL.—Merchandise returned by the appraiser as sweet almond oil, classified at 5 cents per pound, is claimed dutiable at 15 per cent ad valorem, under the provisions of paragraph 45, tariff act of 1913.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 36903 (T. D. 34933) the sweet almond oil in question was held dutiable at 15 per cent under paragraph 45.

No. 39544.—Protest 796487 of A. E. Freeman (Boston), and protests 759859, etc., of Tajimi Co. et al., and protests 785236, etc., of J. T. Steeb & Co. et al. (Seattle and New York).

BAMBOO LAMP SHADES.—Lamp or candle shades in chief value of bamboo are claimed dutiable as manufactures of wood at 15 per cent ad valorem under paragraph 176, tariff act of 1913.

Opinions by MCCLELLAND, G. A. Upon stipulation of counsel that the shades in question are similar to those passed upon in G. A. 7804 (T. D. 35848), they were held dutiable under paragraph 176, as claimed.

No. 39545.—Protest 799526 of Lewis & Conger (New York).

BELLOWS OF WOOD.—It is claimed here that certain bellows are in chief value of wood, dutiable at 15 per cent ad valorem under paragraph 176, tariff act of 1913.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 38649 the bellows in question were held dutiable as manufactures of wood under paragraph 176.

BEFORE BOARD 2, APRIL 13, 1916.

No. 39546.—Protest 766305 of Rice-Stix Dry Goods Co. (St. Louis).

SNAP FASTENERS.—Brass snap fasteners, nickel plated, attached to cotton tape, classified at 50 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed not to be plated with gold or silver, dutiable at only 20 per cent under said paragraph. Glass beaded articles in the form of necklaces and pieces of velvet ribbon to which is attached a small ornament in the shape of a shamrock composed of imitation precious stones with a pendant lavalliere of imitation pearls, classified at 60 per cent as jewelry, under paragraph 356, are claimed dutiable under paragraph 333.

Opinion by FISCHER, G. A. From the testimony it was found that the snap fasteners are plated with nickel and not silver. They were held dutiable at 20 per cent under paragraph 167, as claimed. Protest overruled as to the articles classified as jewelry.

No. 39547.—Protest 787599 of Grolier Society (New York).

BOOKS PRINTED MORE THAN 20 YEARS.—Fifty-two volumes of Thackeray's works, classified at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry as books printed more than 20 years at the date of importation, under paragraph 425.

Opinion by FISCHER, G. A. The books in question were found to have been printed more than 20 years and were held free of duty under paragraph 425, as claimed.

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No. 39548.—Protests 791927, etc., of Alfred Suter et al. (New York).

REED BRUSHING OR POLISHING MACHINES.—Automatic reed brushing or polishing machines used in cleaning the reeds of a loom machine by means of bristle brushes, classified at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as machine tools at 15 per cent under paragraph 165.

Opinion by FISCHER, G. A. It was found that the machines are driven by other than hand power and are equipped with two circular bristle brushes which revolve, moving up and down over the surface of the brass reeds, cleaning and polishing them. Protests overruled, the board holding that a brush may be an implement, but that it is hardly a tool in the sense that term is used in paragraph 165.

No. 39549.—Protests 793272 and 793301 of Wm. A. Brown & Co. (New York).

MACHINERY FOR MANUFACTURING SUGAR.—The appraiser reports that the merchandise consists of centrifugal machines suitable for use in the manufacture of sugar, but that 90 per cent are used for other purposes than sugar making. It was classified at 20 per cent ad valorem under paragraph 167, tariff act of 1913. and is claimed entitled to free entry as machinery for use in the manufacture of sugar under paragraph 391.

Opinions by FISCHER, G. A. It was found that the machinery in question is not chiefly used in the manufacture of sugar, but on the contrary that it is only incidentally and exceptionally used for that purpose. It was held properly classified under paragraph 167. United States *v.* Boker (6 Ct. Cust. Appls., 243; T. D. 35472) followed.

No. 39550.—Protest 796488 of C. H. Langley (Boston).

PLATED WARE.—A 3-light lantern without bulbs or lamps, plated with gold, classified at 50 per cent ad valorem under paragraph 167, tariff act of 1913, is claimed dutiable under the same paragraph at only 20 per cent.

Opinion by FISCHER, G. A. On the evidence presented it was found that the merchandise was properly classified at 50 per cent under paragraph 167.

No. 39551.—Protest 774256–56189 of John V. Farwell Co. (Chicago).

FIGURED COTTON CLOTH.—Cotton cloth classified as Jacquard figured under paragraph 258, tariff act of 1913, and certain cloth composed of cotton and artificial silk classified as manufactures of cotton under paragraph 266, are claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. Protest overruled as to the merchandise composed of cotton and artificial silk, classified under paragraph 266. Abstract 38096 followed. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the Jacquard figured cotton cloth was held dutiable under paragraph 252, as claimed.

No. 39552.—Protest 764519 of Llull & Co. (San Juan).

TURKISH TOWELS.—Turkish towels classified as pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable as cotton towels at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. On the authority of G. A. 7656 (T. D. 35019), Turkish towels were held dutiable under paragraph 264.

No. 39553.—Protest 788657 of McKesson & Robbins (New York).

COTTON WASH CLOTHS—FLAX TURKISH TOWELS.—Wash cloths composed of cotton terry cloth, classified as cotton pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, and Turkish towels classified as flax pile fabrics at 40 per cent under paragraph 280, are claimed dutiable at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. On the authority of G. A. 7656 (T. D. 35019), the cotton wash cloths were held dutiable under paragraph 264, as claimed. Protest overruled as to the Turkish towels made of flax.

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No. 39554.—Protest 785443 of Rice-Stix Dry Goods Co. (St. Louis).

FLAX CRASH.—Linen and flax goods classified as manufactures of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, are claimed dutiable as plain woven fabrics at 30 per cent under paragraph 283.

Opinion by COOPER, G. A. On the authority of United States *v.* Douglas (6 Ct. Cust. Appls., 100; T. D. 35342) the merchandise was found not to be plain woven and held dutiable as classified under paragraph 284.

BEFORE BOARD 3, APRIL 13, 1916.

No. 39555.—Protest 779972 of Mrs. N. J. Walsh (Cleveland).

WOOL WEARING APPAREL—APPLIQUÉD ARTICLES.—A gown made of two colors of woolen cloth so arranged that the red cloth formed a background for the trimming of braid and gold thread which was sewed upon the gown in an ornamental manner, classified as appliquéd wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable at 35 per cent under paragraph 291.

Opinion by HAY, G. A. The ornamentation in question not being cut out of another color or stuff applied or transferred to a foundation, but being a braid sewed directly upon the gown, was held not appliquéd within the meaning of that term in paragraph 358. The gown in question was held dutiable under paragraph 291, as claimed. G. A. 4481 (T. D. 21375), United States *v.* Hamburger (5 Ct. Cust. Appls., 217; T. D. 34382), and Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

No. 39556.—Protest 787134 of L. P. Siebold (Baltimore).

CLERICAL ERROR.—It is claimed here that through a manifest clerical error the value which was stated in the pro forma invoice and entry in United States currency instead of foreign currency resulted in the assessment of duty upon a value in excess of that shown by the consular invoice.

Opinion by HAY, G. A. Protest overruled. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485), and G. A. 7476 (T. D. 33590) followed.

No. 39557.—Protest 791655-6218 of Rosenberg-Neugass Co. (New Orleans).

CLERICAL ERROR.—This protest is against the assessment of duty upon an item of freight which the importer claims is nondutiable, contending that it was included in the entered value through clerical error.

Opinion by HAY, G. A. No clerical error is manifest from the record. Protest overruled. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485), and G. A. 7476 (T. D. 33590) followed.

REHEARINGS GRANTED.

APRIL 3, 1916.

No. 39558.—JACQUARDS, FIGURED.—Protest 749099 of J. C. Klein. Abstract 39290.

No. 39559.—JACQUARDS, FIGURED.—Protests 760430, etc., of Aitken Son & Co. et al. Abstract 39290.

No. 39560.—JACQUARDS, FIGURED.—Protests 784292, etc., of B. Altman & Co. Abstract 39290.

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(T. D. 36320.)

Crape—Veilings—Trimmings.

AUFFMORDT & CO. *et al.* *v.* UNITED STATES (No. 1584).

1. ADMINISTRATIVE PRACTICE CONTRARY TO JUDICIAL DECISION.

An administrative practice contrary to a rule of law established by judicial decision does not justify the court in departing from the rule of law.

2. TRIMMINGS AND MATERIAL FOR MAKING THEM.

Goods in the piece which are not commercially known as trimmings and which are not adapted, in the form in which imported, for use as such, but require to be cut into forms or made into rosettes or bows before being applied to a garment, are not to be classified as trimmings. On the other hand, goods which are known commercially as trimmings or which are imported in a form in which they are intended to be used directly as trimmings, without anything further being done than a mere cutting of the goods, may be and should be classified as trimmings unless otherwise more specifically provided for.—Naday & Fleischer *v.* United States (155 Fed., 303).

3. CONSTRUCTION.

Words in the tariff act must be given the meaning they had at the time of the law's enactment.

4. COMMERCIAL DESIGNATION—VEILINGS.

Whether or not a fabric is veiling is a matter of commercial designation and a question of fact.

5. SILK MOURNING CRAPES, HOW DUTIABLE—TRIMMINGS—VEILINGS.

Goods known commercially as silk mourning crapes, varying in width from 19 to 42 inches, are dutiable under the general provision for woven fabrics of silk in paragraph 318, tariff act of 1913. The fact that the narrow pieces are to be cut up and made into trimmings does not make them dutiable as trimmings under paragraph 358. The wide pieces, at the time of importation and at the time of the enactment of the tariff law of 1913, were little used for making veils, and were not commercially designated veilings. They are not dutiable as veilings under paragraph 358, even though they had been more largely used for making veils and had been classified as veilings by customs officers.

United States Court of Customs Appeals, April 11, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37866.

[Reversed.]

Allan R. Brown for appellants.

Bert Hanson Assistant Attorney General (*Thomas J. Doherty* and *Martin T. Baldwin*, special attorneys, of counsel), for the United States.

[Oral argument December 8, 1915, by Mr. Brown and Mr. Doherty.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise in question consists of silk crapes in the piece, varying in width from 19 to 42 inches. The wide goods were assessed for duty as veilings while the narrower goods were assessed for duty as trimmings, both at 60 per cent ad valorem under paragraph 358 of the tariff act of 1913. Both classes of goods are claimed by the importers

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to be dutiable at 45 per cent ad valorem under the general provision for woven fabrics of silk in paragraph 318 of the same act. The narrower widths of crape in question are chiefly used in making trimmings. In this use the goods as imported are first cut on a bias and then usually hemmed and applied to the garment, or it may be a hat, the bias pieces being usually folded and sewed together before being applied. There are also plaited crape trimmings made from the same material, which in like manner has been cut on the bias and the pieces sewed together.

The board held these goods as imported to be trimmings. The contention of the importers is that they are not such but material for trimmings, and that the rule has been established that material for trimmings is not trimmings within the tariff sense.

The board relied in its decision upon the case of Robinson *v.* United States (122 Fed., 970). In that case material like that here involved was held to be trimmings in the tariff sense, the court saying:

> The evidence before the board was not contradicted, and has not been; and it seems to be clear that the narrow is as well known by the material to be for trimmings as the wide is for veils, and neither seems to belong with the dress goods of paragraph 387.

It is claimed that this case was overruled by the case of Robinson *v.* United States (121 Fed., 204), a case decided three years later than the one reported in 122 Fed. In this later case the goods in question were found by the board to be woven wholly of silk from 4 to 12 inches wide, used directly in these widths either exclusively or chiefly for trimming women's hats, bonnets, or other wearing apparel. They were generally known in the trade as chiffon or mousseline bands, or as gauze ribbons, or as gauze bands, and were assessed as trimmings. The court, Wheeler, District Judge, said:

> These articles are not in themselves trimmings, and will not become such until they are made into designs to be applied as trimmings, or are made into trimmings as they are applied to articles being trimmed. That they are used for making trimmings does not make them such. They are not such, within the meaning of the tariff acts, unless they had by usage come to be known by that name, and the evidence taken in this court shows quite clearly that they had not been brought within the meaning of that word.

The authority of this case was recognized in Gartner *v.* United States (131 Fed., 574). In that case the court said:

> The single question presented is whether these articles are in fact trimmings. The board of appraisers found that the ribbons were applied to a variety of uses, some of which were of the character of trimmings, while others—such as the use for tying bonbon boxes, and as drawing strings for underwear and in corsets—were not in the nature of trimmings. The board also found that in most instances where used for trimming they were cut, tied, and otherwise fashioned for their ultimate use. In these circumstances I should feel inclined to follow the decision of Judge Wheeler in Robinson *v.* United States (C. C., 121 Fed., 204), where it was held that such articles did not become trimmings until they were so fashioned as to be applied to the articles to be trimmed.

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And, referring to the decision of the Supreme Court in the hat-trimming cases and distinguishing them, the opinion proceeds:

In the present case the testimony establishes that the chief uses of these articles are not for trimming hats or dresses, and that they are not in fact or commercially within the class of goods known as trimmings.

The question again arose in Naday & Fleischer *v.* United States (155 Fed., 303). The articles in question in that case were ribbons, ornamented with characteristic designs to be used as trimming and intended to be sewed directly upon the garment without being made into anything else before being appended thereto. It was said by the court:

It has become well established that ribbons that must be made into bows, rosettes, and the like before being used for the purposes of trimming or ornamentation are not to be included under the provisions of paragraph 391 as trimmings; but if the article in question is manufactured with ornamentation and with characteristic design, to be used as a trimming and intended to be sewed directly upon a garment without being made into something else before being appended thereto, it is specifically provided for in paragraph 391 as a trimming.

This case was reviewed by the Circuit Court of Appeals, which also distinguished the hat-trimming cases from the case under consideration, and held that the word "trimming" should be given its meaning in trade and commerce, and upon conflicting testimony concurred with the board that the articles in question were within the trade meaning of galloons or trimmings with certain exceptions, and affirmed the decision of the Circuit Court.

This case was followed in Loewenthal *v.* United States (180 Fed., 951), the evidence in that case showing that the ribbons in question had superimposed ornamentations of a different color from the ground fabric and were intended to be sewed directly upon the garment.

A similar question was presented to this court in Loewenthal *v.* United States (2 Ct. Cust. Appls., 43; T. D. 31592). In that case the importation consisted of narrow, woven silk fabrics from one-half to 1¼ inches in width showing original designs in colors and patterns. This court found in that case that these articles were shown by the evidence to be within the trade term of trimmings, and following the case of Naday *v.* United States (164 Fed., 44), sustained the assessment of the goods as such.

The Board of General Appraisers, in T. D. 35563, followed the Robinson case (121 Fed., 205), and said:

The goods represented by Exhibit 1D consist of crape mousseline, 24 inches wide, imported in the piece. In the condition as imported these goods are not trimmings. The testimony shows that this merchandise is used for making trimmings by cutting it into various forms and shapes to be applied as trimmings. As was said in Robinson *v.* United States (121 Fed., 205), "that they are used for making trimmings does not make them such."

We think it is now well settled that piece goods are not to be classified as trimmings merely because they may be cut into forms and shapes and used for trimming purposes.

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This line of cases would seem to be conclusive in favor of the contention of the importers. The fact that since this rule of law has been announced the Government has continued to assess these crape goods as trimmings does not justify us in departing from the rule of law, nor can the rule of law be restricted to a particular class of goods, whether crape, or mousseline, or other fabric of silk which is subject to precisely the same use and the same considerations. The rule appears to be that goods in the piece which are not commercially known as trimmings and which are not adapted to being used in the form in which imported as such, but require to be cut into forms or made into rosettes or bows before being applied to a garment, are not to be classified as trimmings. On the other hand, goods which are known commercially as trimmings or which are imported in a form in which they are intended to be used directly as trimmings, without anything further being done than a mere cutting of the goods, may be and should be classified as trimmings unless otherwise more specifically provided for.

As to the wider goods, the evidence shows that they are commercially known as mourning crapes, and the testimony fails to show that they are commercially known as veilings. There was testimony tending to show that they were to some extent used in making veils and that formerly their use was much more largely for veils than in recent years. A reason for this change is given by one of the witnesses. But the testimony is undisputed that their predominant use is for other purposes now and was at the enactment of the present tariff law. One witness estimates that not to exceed 5 per cent were used for veiling at the time this law was enacted, while the testimony of another witness would indicate that it might amount to 20 per cent. But the evidence is quite convincing that the prevailing use was not for veilings. So if the word "veilings" is to be construed as intended to fix the tariff status of the article at the time the law was enacted, it would appear that these goods could not fall within that description.

But there is also a failure to show that the goods are commercially known as veilings. In United States *v.* Lahey (83 Fed., 691) the question was whether certain goods were dutiable as chiffon veiling. The court treated the question as one of commercial designation, stating that it involved merely a question of fact.

So we find the situation as to these wider goods to be that they were not commercially known as veilings; that they were not at the time of the enactment of the present tariff law chiefly used as veilings, but that such use was a minor one. Under these circumstances we feel bound to conclude that they were not assessable as such. See American Bead Co. *v.* United States (5 Ct. Cust. Appls., 459; T. D. 35001).

The decision of the board is *reversed.*

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(T. D. 36321.)

Drawback on embossed marcelines, silks, and cotton.

Drawback on embossed marcelines, silks, and cottons manufactured by Frank & Lambert (Inc.), of New York, N. Y., with the use of imported plain marcelines, silks, and cottons.—T. D. 25725 of October 29, 1904, revoked.

TREASURY DEPARTMENT, *April 17, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on embossed marcelines, silks, and cottons manufactured by Frank & Lambert (Inc.), of New York, N. Y., with the use of imported plain marcelines, silks, and cottons.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated March 28, 1916, transmitted herewith, which will show, in the case of each piece of imported material embossed for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, character, and identity of the imported material used, and the quantity of embossed material obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported material used in the manufacture of the embossed material exported, as shown by the abstract from the manufacturing record.

T. D. 25725 of October 29, 1904, is hereby revoked.

Respectfully, WM. P. MALBURN,
(90338.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36322.)

Amendment of customs regulations.

Article 538, relating to aigrettes and other plumage, amended.

TREASURY DEPARTMENT, *April 19, 1916.*

To officers of the customs and others concerned:

Article 538 of the Customs Regulations of 1915 is hereby amended so as to make the next to the last paragraph of the article read as follows:

As the plumage of the following species may be obtained from either wild or domesticated birds, such plumage should be admitted only upon the presentation of a consular certificate or other satisfactory evidence that it was in fact taken from domesticated birds: Amherst pheasant, reeves pheasant, versicolor pheasant, ring-necked pheasant, black duck, mallard duck, mandarin duck, muscovy duck, and swans.

(92655-27.) WM. P. MALBURN, *Assistant Secretary.*

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(T. D. 36323.)

Drawback on cigarette tips.

T. D. 34561 of June 18, 1914, extended to cover individual cigarette tips manufactured by the Boucher Cork & Machine Co. (Inc.), of New York, N. Y., with the use of imported straw sheets.

TREASURY DEPARTMENT, *April 19, 1916.*

SIR: The department's regulations of June 18, 1914 (T. D. 34561), providing for drawback on cigarette tips manufactured by the Boucher Cork & Machine Co. (Inc.), of New York, N. Y., with the use of imported cork tips and paper, are hereby extended to cover individual cigarette tips manufactured by the said company with the use of imported straw sheets.

The sworn statement of the manufacturers, dated March 27, 1916, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(92087.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36324.)

Drawback on printed wrappers.

Drawback on printed wrappers for "Sapolio," manufactured by the James Kempster Printing Co., of New York, N. Y., with the use of imported surface-coated paper for the account of Enoch Morgan's Sons Co., of New York, N. Y.—Department's instructions of March 19, 1891, revoked.

TREASURY DEPARTMENT, *April 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on printed wrappers for "Sapolio," manufactured by the James Kempster Printing Co., of New York, N. Y., with the use of imported surface-coated paper for the account of the Enoch Morgan's Sons Co.

The allowance shall not exceed the quantity of imported surface-coated paper appearing in the exported wrappers, as shown by the sworn statement of the Enoch Morgan's Sons Co., dated April 5, 1916, which is transmitted herewith, together with the sworn statement of the James Kempster Printing Co., dated April 4, 1916.

The department's instructions of March 19, 1891, are hereby revoked.

Respectfully, WM. P. MALBURN,
(88931.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36325.)

Drawback on tire fabrics, etc.

Drawback on tire fabrics, sailcloth, special ducks, and other fabrics manufactured by the Bay State Cotton Corporation, of Boston, Mass., with the use of imported silk yarns, cotton yarns, and ramie.—T. D. 31469 of April 6, 1911.

TREASURY DEPARTMENT, *April 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on tire fabrics, sailcloth, special ducks, and other fabrics manufactured by the Bay State Cotton Corporation, of Boston, Mass., with the use of imported silk yarns, cotton yarns, and ramie.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated April 6, 1916, transmitted herewith, which will show, in the case of each lot of fabric manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, kind, value, and identity of imported material used, the quantity (linear yards and width) and character of the fabric produced, the quantity of imported material appearing therein, and the quantity and value of the waste resulting. An abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported material appearing in the exported fabrics, with an addition to compensate for waste, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

T. D. 31469 of April 6, 1911, is hereby revoked.

Respectfully, WM. P. MALBURN,
(85975.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36326).

Drawback on braids, trimmings, etc.

Drawback on braids, trimmings, neckwear, sweaters, and other braided or knitted articles of wearing apparel manufactured by the Waitzfelder Braid Co., of Brooklyn, N. Y., with the use of imported yarns, natural or artificial, artificial horsehair, and metal thread.—T. D. 30074 of October 29, 1909, and T. D. 30631 of May 21, 1910, revoked.

TREASURY DEPARTMENT, *April 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on braids, trim-

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mings, neckwear, sweaters, and other braided or knitted articles of wearing apparel manufactured by the Waitzfelder Braid Co., of Brooklyn, N. Y., with the use of imported yarns, natural or artificial, artificial horsehair, and metal thread, or with the use of such yarns and artificial horsehair after the same have been bleached or dyed, or both, for the account of the manufacturers by William Teschemacher & Co. or William Werner (Inc.), both of Brooklyn, N. Y., or others, upon the filing of proper sworn statements, in accordance with the requirements of T. D. 35875 of November 12, 1915.

A manufacturing record shall be kept in the manner prescribed in the sworn statement of the manufacturers, dated March 23, 1916, which will show, in the case of each lot of articles manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the kind and quantity of articles manufactured, and the quantity and identity of each kind of imported material appearing therein. An abstract from such manufacturing record, together with an abstract from the manufacturing record of the bleacher, dyer, or winder, where necessary, shall be filed with the drawback entry.

The allowance shall not exceed the quantities of imported materials appearing in the exported articles, as shown by the abstracts from the manufacturing records.

The sworn statement of the manufacturers, dated March 8, 1916, and the sworn statement of William Werner (Inc.), dated March 15, 1916, are transmitted herewith for filing in your office.

T. D. 30074 of October 29, 1909, and T. D. 30631 of May 21, 1910, are hereby revoked.

Respectfully, WM. P. MALBURN,
(10345.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36327.)

Drawback on medicinal preparations.

Drawback on medicinal preparations manufactured by Dr. Kilmer & Co., of Binghamton, N. Y., with the use of domestic tax-paid alcohol.—T. D. 28098 of April 19, 1907, and T. D. 30071 of October 26, 1909, revoked.

TREASURY DEPARTMENT, *April 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on medicinal preparations designated as "Swamp Root," "Heart Remedy," "Female Remedy," "Autumn-Leaf Extract," and "Cough Cure" manufactured

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by Dr. Kilmer & Co., of Binghamton, N. Y., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported medicinal preparations, as shown by the sworn statement of the manufacturers, dated January 27, 1916, which is transmitted herewith for filing in your office.

T. D. 28098 of April 19, 1907, and T. D. 30071 of October 26, 1909, are hereby revoked.

Respectfully, WM. P. MALBURN,
(68317.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36328.)

Drawback on medicinal preparations.

Drawback on extract of witch-hazel manufactured by E. E. Dickinson & Co. (Inc.), of Essex, Conn., with the use of domestic tax-paid alcohol.—T. D. 30075 of October 29, 1909, and T. D. 32260 of February 14, 1912, revoked.

TREASURY DEPARTMENT *April 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on a medicinal preparation designated as "Extract of Witch-Hazel" manufactured by E. E. Dickinson & Co. (Inc.), of Essex, Conn., with the use of domestic tax-paid alcohol.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated February 18, 1916, transmitted herewith, which will show, in the case of each lot of extract of witch-hazel manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity of extract of witch-hazel produced, and the quantity, proof, and identity of the alcohol appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported extract of witch-hazel, as shown by the abstract from the manufacturing record.

T. D. 30075 of October 29, 1909, and T. D. 32260 of February 14, 1912, are hereby revoked.

Respectfully, WM. P. MALBURN,
(68829.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36329.)

Drawback on hats.

T. D. 35112 of February 4, 1915, extended to cover blocked or blocked and trimmed hats manufactured by the Superior Hat Works, of New York, N. Y., with the use of imported Japanese straw shapes.

TREASURY DEPARTMENT, *April 19, 1916.*

SIR: The department's regulations of February 4, 1915 (T. D. 35112), providing for drawback on hats manufactured by the Blum & Lehman Co., of Philadelphia, Pa., with the use of so-called Panama hats imported in the rough, are hereby extended to cover blocked or blocked and trimmed hats manufactured by the Superior Hat Works, of New York, N. Y., with the use of imported unfinished Japanese straw shapes.

The sworn statement of the manufacturers, dated March 31, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on blocked or blocked and trimmed hats exported on or after February 7, 1916.

Respectfully, WM. P. MALBURN,
(104705.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36330.)

Conference of collectors of customs, 1915.

Recommendations made by the conference and the action thereon by the department.

TREASURY DEPARTMENT, *April 20, 1916.*

To officers of the customs and others concerned:

The recommendations of the conference of collectors of customs held at New York, October 4–9, 1915, on the questions submitted thereto and the action of the department thereon are hereby appended for your information and guidance. Reference is omitted to questions withdrawn without discussion.

ADMINISTRATION AND GENERAL PRACTICE.

(1) What should be the course at naval office ports of consumption and warehouse entries, including invoices and permits, and how should these papers be filed after liquidation?

Referred to the efficiency board for report to the next conference.

(2) Should a card index of ultimate consignees be kept at all ports?

The efficiency board, to which the matter was referred, is of the opinion that such a card index should be kept, and the department will issue appropriate instructions.

(3) Should importers be permitted to file at the customhouse consumption and warehouse entries for preliminary examination prior to the arrival of the importing vessel?

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The department concurs in the opinion expressed by the conference to the effect that such practice should be permitted, when practicable to make advance examinations.

(4) Should such entries, and all papers connected therewith, be numbered at the time they are filed in the customhouse, or should the entry clerks check the entry and defer numbering the papers until after the arrival of the importing vessel? Should examination packages be designated at the time of the preliminary examination, or after arrival of vessel, and the payment of duty?

The department concurs in the action of the conference adopting the report of the efficiency board to the effect that such entries should be numbered at the time declared to, which must be after the arrival of the vessel; and that examination packages may be designated at the time of preliminary examination, provided the entry papers are kept under lock and key so that the importer can not ascertain the packages so designated.

(5) Should immediate transportation entries, withdrawal from warehouse, etc., covering merchandise received in bond from other ports be given to the brokers for the purpose of making entry, and if so, should a receipt be taken?

The department concurs in the recommendation of the conference that the questions should be answered in the affirmative, and that a record should be made of the brokers and parties in interest to whom the papers are delivered.

(6) Should the entry be checked against the (vessel's) manifest in connection with the examination of all papers by the entry clerk?

In accordance with the recommendation of the conference that the question be referred to the proper body for special investigation and report, the matter will be referred to the efficiency board for report to the next conference.

(7) Should only one case in each ten, regardless of the different classes of merchandise, or one case of each class of merchandise covered by the invoice, be ordered in for examination, when there is no reason to doubt the correctness of the invoice?

The department approves the recommendation of the conference that an examination be made of only one package in ten of each invoice, when the integrity of the invoice is not in question.

Questions 8 to 11, inclusive, related to the handling of entries in and between the entry division, the cashier's office, and the liquidating division. The conference recommended that these matters be referred to the efficiency board for a report to the next conference, and the recommendation is approved.

(12) What should be the practice with respect to exemptions allowed American tourists receiving part of their personal effects through other ports than the one at which they arrive in the United States?

The department approves the recommendation of the conference that the collector of customs either hold the baggage or take esti-

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mated duties as the passenger prefers pending advice from the port at which the passenger arrived.

(13) Would the passing of goods intended for export be simplified by accepting warehouse and immediate exportation entries in cases of direct importations of goods arriving under immediate transportation entry, even though not shown goods intended for export when imported?

The department concurs in the opinion expressed by the conference to the effect that immediate transportation and exportation entry or immediate exportation of such merchandise should be permitted when satisfactory evidence is produced that the merchandise originally was intended for exportation, or has been sold for exportation while in transit, if there is no reason to believe the revenue will be endangered; and that collectors at ports of exit may require the production of original invoices, and make such examination of the merchandise as may be necessary for identification.

(14) Amendment to T. D. 31147 suggested to facilitate reentry, free, of horses or other animals of foreign origin, originally imported for breeding, and later exported and reimported in same district under like conditions.

The conference recommended that T. D. 31147 be amended to apply to horses reimported in the district of original importation, regardless of the district from which taken, upon identity being established by affidavit. The department approves the recommendation and T. D. 31147 will be amended accordingly.

(15) Should cord and seal be discontinued and a gummed tough fiber paper strip in long strips on reel with wetting device be used instead?

Question answered in the negative.

(16) Should the department authorize cancellation of residue cargo bonds given under Article 133, Customs Regulations of 1908, and sections 2776 and 2777, Revised Statutes, on inspector's certificate of nonlanding and evidence of entry on outward manifest, or upon foreign customs landing certificate or other evidence?

The question being covered by article 996 of the Customs Regulations of 1915, no action was taken by the conference.

(17) Discuss the method of preparing import and export returns under T. D. 35518, especially where made at subports. Can importers be required to file statistical import statement with entries?

The department concurs in the recommendation of the conference to the effect that at border ports the export returns should be consolidated on a single report covering the day's transactions, where this may be accomplished without requiring additional clerks, there being no objection to following this method where it is preferred. Importers are required by law to file a statistical statement with their entries and it is believed to be entirely feasible.

(18) Should entries for immediate transportation to ports in other States of imported hides be permitted at ports situated in States the quarantine regulations of which include hides?

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The question was referred to the department, which will not render an opinion until an actual case is presented.

(19) Suggested that in the case of merchandise entered for warehouse, such as beans, and similar merchandise, where sizes of packages are fairly uniform and duties comparatively small, average test weights only be taken, these weights to be marked on each package and the merchandise be withdrawn only on such marked weights.

The suggestion is approved by the department.

(20) Suggested that the transshipment of in transit merchandise in cars which have broken down be done without supervision, as in the case of I. T. goods.

The conference approved the suggestion. The matter is covered by article 665 of the Customs Regulations of 1915, and it is not therefore necessary to issue further instructions.

(21) Can not collectors of customs be relieved from the correspondence required by special agents of the Treasury Department in connection with "warning letters" sent out by them relative to the undervaluation of merchandise?

The department concurs in the recommendation of the conference that only such letters as may give affirmative evidence be written.

(22) Should article 468, Customs Regulations of 1908, be amended in the case of specific-duty goods when warehouse is constructive and lading for the transportation is to occur at the landing wharf of the import vessel, so as to permit the transaction to be completed and transportation initiated prior to completion of liquidation of the afloat withdrawal entry?

No action was taken on this question, it being covered by article 686, Customs Regulations of 1915.

(23) Should existing law governing transportation of merchandise in bond be amended to provide a penalty for failure to present properly validated carrier's manifest describing the time that the merchandise in bond is delivered into customs custody?

The existing common carrier's bond provides for the imposition of a penalty in such cases; and the conference recommended that frequent or flagrant offenses of this character should be reported to the department under T. D. 32280 for action. Such recommendation is approved by the department.

(24) In view of the alleged lack of uniformity in the assessment of duty on cheese, should not the Department issue instructions in this regard so that like action may be taken at all ports?

The question was referred to the department for action and will be the subject of separate instructions.

(25) In view of the provisions of T. D. 34614 and T. D. 35518, relative to the information called for by statistical schedule E, and the procedure to be followed for making statistical returns on imports and exports, should not consular agents' attention be called to the importance of complying strictly with the provisions of the second and third sentences in the second section of paragraph 666 of the consular regulations of 1896, as amended by Executive order of May 28, 1914; and also since the failure of a consular agent to specify the contents of each case or package in a shipment necessitates the examination by the appraiser of all the packages, should not the con-

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sular agents' attention be called to the importance of complying strictly with the first sentence in the second section of paragraph 666 of the consular regulations referred to above?

With respect to the first part of the question, the department concurs in the conclusion reached by the conference that it is impracticable for foreign shippers to prepare statements in accordance with schedule E; and in accordance with the conclusion reached by the joint conference of collectors and appraisers on the second part of the question, the department will have a special investigation made of the matter.

(26) Should article 208, Customs Regulations of 1908, be amended to permit collectors to pass upon applications to amend entry by importer without submitting it to the Secretary?

The conference took no action, as the suggested amendment was made in article 227, Customs Regulations of 1915.

(27) Should article 570, Customs Regulations of 1908, amended by T. D. 32388, be further amended to allow collectors to pass free, under paragraph 404, articles not over $25 entered as foreign origin and found on examination by appraiser to be United States products conditionally free on filing by owner of required affidavit for entry of American products (Cat. 3311), obviating the necessity of transmitting applications to the department?

The department concurs in the recommendation of the conference that where an importer erroneously enters American products as foreign, and the appraiser reports the same as of domestic origin, the importer be permitted to file evidence required for free entry of American products at any time prior to liquidation, and the entry be liquidated free.

(28) Should general order cartage be included in regular contract for customs cartage, or be by separate contract, and on what basis should rate be fixed?

The question is covered by article 824, Customs Regulations of 1915, which requires a separate contract for general order cartage.

(29) On account of the impossibility of securing from Mexico reliable certificates of landing for in transit bonded merchandise, where seals are broken, and the United States customs officer is unable to furnish certificate of exportation, should not check be made of merchandise on American side and transportation companies reimburse the Government?

Question answered in the negative.

(30) Is it desirable to have uniformity in practice of noting on I. T. manifests shortage of shipment, where shortage is to follow, thus giving information to unlading inspector and enabling him to make indorsements on manifest?

The department approves the recommendation of the conference that the question be answered in the affirmative, if the information is available at the I. T. port of shipment when the goods are shipped.

(31) Suggested that steps be taken to secure prompt forwarding of certificate of short landing of merchandise (Cat. 3825), to the ports of delivery to which merchandise is transported under I. T.

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The department approves the recommendation that collectors should take steps to forward certificates at the earliest practicable time.

(32) Should section 3, act of February 13, 1911 (T. D. 31562), be amended to give discretion to collectors in accepting bonds less than penal sum of $50,000 for special license and permits for immediate lading or unlading by day or night during six months?

It was recommended that the law be amended so as to fix the amount of the the bond under general regulations of the department. The matter will be given consideration by the department.

(33) Suggested that the use of private certified invoices of exporters, for statistical purposes, would be an improvement on the present system of compiling from manifests, as the invoice would be more likely to enable the statistical clerk to determine the nature of the goods. Also the omission of quantities where the values of the same kind of articles, such as safes, varies to such an extent that giving the number would seem to be useless. Where a knowledge of the quantity is desirable, as in adding machines, it would seem that there should be added a class for parts of adding machines, as otherwise such parts are classified as "All other machinery parts," consequently the exports for that particular branch of business is not properly reported.

That portion of the question relating to shippers' manifests is covered by T. D. 35708, as amended by T. D. 35969. With respect to the remainder of the question, the department concurs in the recommendation of the conference that collectors desiring to suggest any changes in Schedule B should report the matter to the Bureau of Foreign and Domestic Commerce, Department of Commerce, for specific recommendation.

(35) In getting up and furnishing statistical or other information to newspapers, etc., to what extent are customs officers expected to go?

The conference recommended that the matter be left to the discretion of collectors to deal with as they may deem proper. The recommendation is approved for the present. The mechanical tabulation of statistics is, however, being developed, and it is probable that in the near future precise instructions in relation to furnishing statistics will be given.

(36) Can anything be done to get quicker action and better returns on violations of navigation laws reported to district attorneys?

The conference recommended that cases of undue delay on the part of United States attorneys should be reported to the Department of Commerce, in order that the matter may be taken up with the Department of Justice.

(38) When a declaration for the free entry of effects, tools of trade, etc., is presented, and it is shown that the owner arrived in the United States many years prior to the importation, should not an explanation of unusual delay be demanded?

The department concurs in the recommendation of the conference that in each case the collector should require such explanation as may be necessary to establish the bona fides of the transaction.

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(39) After how long an interval between the arrival of the owner and the importation should the entry be liquidated for duty under T. D. 2768 on the ground that the owner "can not be regarded as a person arriving in the United States"?

The recommendation by the conference that the collector should be assured that the goods were used abroad for a period of one year is approved by the department.

(40) Should such an entry be liquidated free of duty if the declaration is incomplete and fails to show that the owner is a person arriving in the United States, or the date of his arrival?

The department approves the recommendation of the conference that no forms other than those prescribed by the department be accepted in such a case.

(41 and 69) Should not collectors of customs at I. T. ports of entry forward triplicate copies of consular invoices to port of destination in all cases when a consular invoice filed with the I. T. entry shows ports of arrival and entry to be the I. T. port of entry?

The department will give consideration to the recommendation of the conference that section 2857 of the Revised Statutes be repealed.

(42) Should customs inspectors appraise dutiable articles found in passengers' baggage?

In accordance with the recommendation by the joint conference of collectors and appraisers, article 1087 of the Customs Regulations of 1915, has been amended so as to increase the limitation of $90 therein to $100 in order that the examining inspectors may pass on the full exemption allowed to returning residents of the United States.

(43) Is there any objection to customs inspectors taking acknowledgments to passengers' declarations?

The department approves the recommendation of the conference that customs inspectors be permitted to take passengers' declarations on baggage entries without having been designated as acting deputy collectors.

(44) Suggested that the department publish a complete list of the places designated from time to time by the department from which invoices certified otherwise than in accordance with section 3 of the tariff act of 1913 may be accepted on entry.

The question was answered in the negative.

(45) Should not all letters of instructions issued to any port which would be of general interest be given a Treasury Decision number and published?

The recommendation by the conference that the question be answered in the affirmative will be followed by the department with respect to questions not previously covered by published decisions.

(46) Should not all internal-revenue decisions covering emergency revenue law and other laws affecting the customs service be given Treasury Decision numbers or bound volumes of said internal-revenue decisions furnished to collectors of customs?

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The recommendation by the conference that internal-revenue decisions affecting the customs be published in the bound volumes, but not given a customs number, will be given consideration.

(47) Should not collectors of customs be provided with a fund for the payment of telegrams and express packages delivered "collect"?

Those collectors desiring to be furnished with a contingent fund should make requisition upon the department therefor, explaining the necessity.

(49) Should not entries, invoices, and other documents filed or deposited with collectors be destroyed after a period of 20 years from such filing or depositing?

The matter was referred to the efficiency board for recommendation.

(50) Is there any objection to boarding vessels at the dock instead of in the harbor?

The department approves the recommendation by the conference that the place for boarding vessels be left to the discretion of collectors of customs.

(51) When a broker making entry in his name is involved in bankruptcy proceedings, should not the ultimate consignee (when the duties have been paid by him) receive any refunds found due in the liquidation?

It was recommended that in case a broker has entered merchandise in his own name for the account of the actual importer, and the broker has become bankrupt, refunds due on liquidation should be withheld from payment, and the case reported to the department for instructions. The recommendation is approved.

(52) Suggested that when classification is changed to a lower rate, following department instructions or information from New York or some other port, such lower rate should apply to all invoices reported on and not liquidated within thirty days; and that when classification is changed to a higher rate, such change is applied to all unliquidated invoices.

It was recommended that the department issue appropriate instructions. This matter will be the subject of special instructions from the department.

(53) Should subsection 1 of paragraph F of section 4 of the tariff act of 1913 be amended to provide for delivery under bond of articles or packages not properly marked thereunder?

The department will give consideration to the recommendation that the statute be amended.

(54) Should a fee be charged for making statistical reports to private parties?

See the answer to question 35.

(55) Should not department Form 272, "Power of authority used by bonding companies in the appointment of officers, agents, and attorneys in fact to sign customs bonds" be modified so as not to define the character of seals to be used?

The changes recommended by the conference, in order to make the certificate and instructions harmonize with each other, will be made when a new supply of this form is printed.

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(56) Should importers be allowed to ship part of the merchandise imported on one invoice in bond to another port of entry?

The department concurs in the recommendation by the conference that the question be answered in the negative.

(57) Should applications for correction of clerical errors under article 1053, Customs Regulations of 1908, be required to be forwarded through the collector's office?

It was the sense of the conference that the question is answered by article 625, Customs Regulations of 1915.

(59) Suggested that the stamp used on invoices, under article 219 of the Customs Regulations of 1908, be amended by striking out all except the last two lines.

The department approves the recommendation by the conference that the form prescribed in article 237 of the Customs Regulations of 1915 be used until it is demonstrated that modifications are necessary.

(60) A proposed form for stamp referred to in No. 59.

The action of the conference was the same as in No. 59.

(61) Should not each customhouse be equipped with a central library containing works of law and reference necessary or valuable to officers administering customs and navigation laws, said library to be in charge of a librarian?

The question was answered in the negative and the department concurs therein.

(62) On articles claimed free under paragraph 427 (books), paragraph 573 (scientific instruments), and paragraph 611 (regalia, imported through dealers) should the Government require security for the production of certificate of delivery either by bond or deposit of duty?

The department concurs in the recommendation of the conference that, until it is shown that the Government has sustained loss in duty under existing practice, no change should be made in the practice and regulations.

(63) When free entry is claimed under paragraph 652 of the act of 1913 for paintings, drawings, statuary, or sculpture as originals or in the case of sculpture or statuary as first or second replicas, what evidence, if any, is required on entry to show that the articles are originals etc.?

The department concurs in the recommendation of the conference that the following proofs be required under paragraph 652: (1) Certificate of artist who executed the article, whether original, first or second replicas; (2) if shown impossible to produce artist's certificate, declaration of seller or shipper may be accepted; (3) in the absence of the foregoing, and on satisfactory explanation therefor, importer's oath may be received.

(64) At what time does the invoice or merchandise come under the observation of the appraiser for the purpose of limiting the importer's right to make additions to or deductions from the invoice value for market value under paragraph I of section 3 of the tariff act?

The department approves the recommendation by the conference that this provision should be construed to mean "when the invoice or

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the merchandise has come under the observation of the appraising officer for the purpose of examination and appraisement."

(65) Is the importer required to pay a fee where reappraisement is asked by the collector and advance secured on which appeal is made by importer to board of three?

The department concurs in the opinion expressed by the conference that the customs administrative act does not provide for the collection of a fee of this nature.

(66) From what day does the 30-day period in which protests can be filed begin to run in the case of entries made at subports, and liquidated at headquarters ports, when the bulletin notice and the liquidated entries do not reach the subport until after the date of liquidation?

It was the sense of the conference that the liquidating stamp on entries, in such cases, should be dated a sufficient time in advance to permit the entries to reach subports on or before the date of the stamp; and that notice of liquidation should be posted at the port of entry on the date shown in the liquidation stamp; and also that the time in which protests may be made at the port of entry runs from the date of posting the bulletin notice at that port, as held in T. D. 34025.

(67) Should a method be devised by which the amount of parcel-post matter passing through customs officers at post offices be checked?

The matter was referred to the efficiency board for investigation of the present system of handling parcel-post packages, with a request that the board recommend an improved system that will better safeguard the revenue.

(68) In view of the provisions of T. D. 35134, what record is kept at various ports to insure the inclusion in report of statistics of merchandise unconditionally free, arriving by parcel post?

In view of the provisions of the joint customs and postal regulations, and article 313, Customs Regulations of 1915, the conference expressed the opinion that mail entries should not be issued for goods unconditionally free where the value does not exceed $100. The matter of record, however, will be taken up by the efficiency board in connection with question 67.

(69) Covered by and answered in the same manner as question No. 41.

(70) What are railroad records within the meaning of article 6 of the drawback regulations? Will a copy of billing be sufficient?

The department approves the recommendation of the conference that the railway records referred to in article 6 should be the official copy of the records of the exporting steamship or railroad line or a certified copy thereof; that if a waybill can not be produced a certified copy should be secured and used in lieu thereof.

(71) Should not all goods imported, destined to an interior port to which goods can be forwarded in bond, under I. T. regulations, be so forwarded and required to be entered and cleared from the customs by the importer at the port of final destination?

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Recommended that the department endeavor to secure an amendment of the I. T. law (act of June 10, 1880, 21 Stats., 173) so that the limit of 10 days in which the goods can go forward in bond be extended to one year or such other time as may be thought reasonable. The matter will be given consideration by the department.

(72) Should not the number of unsealed foreign mail packages received at interior ports be checked with "Notice of unsealed mail packages forwarded without examination," New York Cat. 3508, received at the interior port by mail from the port from which such mail packages are forwarded?

Referred to the efficiency board for consideration in connection with question 67.

(73) Should not reports be made by number on Cat. 5043 by collectors of disposition of mail packages received for examination bearing label, Form B, Cat. 3427?

The conference recommended that the question be answered in the negative in view of T. D. 34580. This matter will be taken under advisement by the department.

(74) Suggested that all triplicate invoices be transmitted to and filed with the appraising officer, under the collector's entry number, and indexed according to commodities in important cases.

The conference recommended that the triplicate invoices be filed with the appraiser after entry is made with the exception of those ports where the examiners' records are such that they do not need them. The recommendation is approved by the department.

(75) Should the drawback laws be amended to provide that drawback shall not exceed the duties which would be payable on the materials or merchandise covered by the drawback claim if imported at the time of exportation?

The question was answered in the negative.

(76) Suggested that debenture, Cat. 4487, be discontinued and drawback paid by check.

The conference approved the suggestion, and recommended that the law be amended accordingly. The department will consider the recommendation.

(77) Should notices of intent and entries covering toilet and medicinal preparations, manufactured with the use of duty-paid materials and domestic tax-paid alcohol be filed in duplicate or should separate entries be filed?

It was the sense of the conference that such merchandise should be covered by one notice of intent filed in duplicate; that entries should be completed by filing simultaneously, one entry in duplicate for the duty-paid material under article 11, T. D. 31695, and one entry in duplicate for the domestic tax-paid alcohol, under article 29, T. D. 31695; and that notice of intent, article 4, T. D. 31695, should be modified by adding after the words "Imported materials," the words "and on internal-revenue tax paid on the domestic alco-

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hol." The department concurs in the recommendation, and action will be taken accordingly.

(78) Should not certificates of importation issued at nonnaval office ports be forwarded before use to the auditor for checking with his copy of the entry to avoid the issuance of duplicate certificates of importation and to detect possible errors in the statement of quantity, value or rate of duty, all such certificates to be charged on the auditor's copy of the entry?

The conference recommended that such a practice be put into effect if the auditor should report to the department that it would be practicable for him to make this check. The auditor has advised the department that it will be practicable for his office to check these certificates as indicated; and such certificates therefore should be forwarded to the auditor, to be noted upon the original copy of the entry in his office, and then forwarded by him to the port at which exportation is to be made, as indicated in the certificate.

(79) Should the department be requested to amend the drawback regulations (article 11, T. D. 31695) as amended by T. D. 33231, to make the time limit within which drawback entries must be filed 18 months instead of 1 year, with an extension of 6 months for good and sufficient reasons?

The question was answered in the negative.

(80) On importation of American goods, free of duty under paragraph 404, should the collector require entry under paragraph 404 as American goods returned, or may goods be entered under other paragraphs of the free list as though foreign?

The department concurs in the recommendation by the conference that T. D. 34669 be followed in all such cases.

(81) If the latter view is adopted, should not the collector in the case of American goods commonly exported with benefit of drawback, require some evidence of exportation without drawback as though they had been entered as American goods returned?

The recommendation by the conference that the collector should in his discretion require the same evidence as though the goods had been entered as American goods returned is approved by the department.

(83) Various forms and sizes of drawback entries are used. Would liquidation be facilitated if the standard form of entry were printed by the department?

The conference recommended that drawback entries should be prepared in sizes 8½ by 14 inches, or multiples thereof. Inasmuch, however, as drawback entries are furnished by the importer, the department will take this question under consideration.

(84) Discussion requested of Ohio's method of distributing and accounting for entry blanks, Cat. No. 7501–4 as follows: Each port of entry sent and debited with blanks sufficient for needs quarterly. When further supply is required, the deputy collector in charge orders and pays for same, remittance being made from sales of basic stock.

The department approves the recommendation by the conference that the method submitted by Ohio, or a similar method providing

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for a single report of receipts from the sale of blanks from headquarters ports, be adopted.

(85) Should stationery be kept under lock and key in charge of a stock clerk and a written request, indorsed by a division head, be made for supplies?

It was recommended that the question be answered in the negative. The department is of the opinion that the collectors should exercise discretion in the matter, bearing in mind the best interests of the Government and the conditions at their ports.

(88) Should brokers notify collectors each year that they are still in business and their address, and is failure to do so "good and sufficient reason" for revocation of license?

The department concurs in the recommendation by the conference that the question be answered in the negative.

(89) Should the fact that a broker has gone into other business or removed from the port be considered "good and sufficient reason" for the revocation of his license?

The question was answered in the negative, and the department concurs therein.

(90) Should the existence of judgment against a broker for duties be considered "good and sufficient reason" for the revocation of his license?

The conference recommended that the question be answered in the affirmative. The department is of the opinion that a refusal by a broker to pay duties due to the Government, whether reduced to a judgment or not, constitutes sufficient grounds for the revocation of his license.

(91) Should importers import model gowns, etc., in separate cases or packages so entry can be made on customs form 7539 for goods entered on special six months' bond?

The conference was of the opinion that such practice would be desirable, although believed to be impracticable of enforcement. It also expressed the opinion, and the department concurs therein, that there is no objection to extracting from the invoice articles to be entered under six months' bond, although contained in the same case with other merchandise, and making a separate entry of the same.

(92) Should not T. D. 33385 (shortages of grain forwarded under T. & E.), be amended by specifying what will constitute a "series of entries" in order that intended prorating of shortages may be accomplished?

The conference accepted the department's views expressed in a letter addressed to the collector at Duluth, Minn., July 9, 1915, File No. 92200–107, to the effect that a series of entries pertains to a particular cargo or lot of grain in bulk before being divided into several entries, and in making the adjustments to determine whether there is a shortage in excess of the 2 per cent allowance, after pro-

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rating the shortage among the respective entries of the series, if the shortage as prorated does not exceed the 2 per cent allowance, no report should be made to the department, as no fine accrues, and the charge against the carrier's bond should be canceled.

(93) Should the department publish annually, or whenever required, addenda, or amendments to new regulations in the shape of pasters?

In accordance with the recommendation of the conference, the department will print for use by pasting in the regulations, the amendments or changes as made, printed on one side only.

(94) Advisability of collectors submitting annual narrative report at the end of the fiscal year, reviewing the work of the year, as well as suggestions for the department's consideration for improvement of the service.

The conference recommended that it would be desirable if the character of the report and extent be specified by the department. The department desires that such reports be made. They should not exceed 3,000 words in length and should briefly recite the conditions of business during the past year and particularly any changes from previous year. They should also show the improvement made in the service with recommendations for further improvements therein.

(95) Should not Cat. 3063, "Report of transactions," be changed to show the expenses and actual work done at various ports?

The department approves the recommendation that the members of the conference having concrete suggestions for improvement should submit them to the department as early as possible, in order that the efficiency committee working on this subject may have them before it.

(96) The amendment of the joint postal regulations to require declaration of shipper covering importation through the mails from Canada suggested.

In accordance with the recommendation of the conference, the department will take up with the Post Office Department the question of the feasibility of requiring declarations in case of packages arriving through the mails from Canada and Mexico.

PRACTICE UNDER THE DEPARTMENT OF COMMERCE.

(97) Suggested that collectors of customs be supplied, under section 4306, Revised Statutes (if not now obsolete), with proper blank forms of bond covering vessels of the United States leaving the United States bound for a foreign country, without a passport, or statute repealed if obsolete.

The conference was informed of the views of the Department of Commerce to the effect that, inasmuch as the practice of issuing passports in such cases is obsolete, the discussion of the question would not be of special value owing to the fact that the existing and future war conditions may directly or indirectly affect the matter.

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(99) At ports where collectors of customs act as ex officio shipping commissioners, should regular fees for the performance of these services be charged?

The Department of Commerce, to which the question was referred on the recommendation of the conference, states that extra compensation can not be given ex officio shipping commissioners, without additional legislation, for the reason that the fees referred to were abolished by the act of June 19, 1886.

(100) Should there not be a uniform date for the expiration of licenses for all enrolled or licensed vessels of the United States?

The question was answered in the negative.

(101) Should not Commerce Cat. 1423-a, "Record of indorsements of change of master," be abolished and a form for that purpose printed on the backs of Cats. 1272, 1286, 1289, 1291, etc.?

The question was answered in the negative.

(102 and 132) Should the present form of vessel's document, register, enrollment and license, or license, be amended to show separately the tonnages of the inclosures that are included in the vessel's gross tonnage, the tonnage of the machinery space from which propelling power has been determined, and a description and tonnages of the spaces exempted from the gross tonnage?

The department has been advised by the Department of Commerce that the edition of these forms dated January 1, 1916, provides the required spaces.

(104) Suggested that the Department of Commerce issue a monthly bulletin similar to the Treasury Decisions, to contain department circular letters and copies of letters and other departmental matter concerning practice and procedure under the navigation laws

The recommendation of the conference that the question be answered in the affirmative is now being considered by the Department of Commerce.

(105) Suggested that Cat. No. 1271 "Consolidated certificate of enrollment and license" under sections 4319 and 4321, Revised Statutes, as amended, be abolished.

The Department of Commerce does not concur in the recommendation of the conference that the suggestion be approved, but it has advised this department that it is inclined to favor a former suggestion that the distinction between licensed vessels over and under 20 tons be abolished.

(108) Should copies of the "Pilot rules," which are now furnished free of charge, be charged for at the rate of 10 cents per copy?

The question was answered in the negative, in accordance with the opinion expressed by the Department of Commerce.

(110) Should the measuring of vessels and the examination of immigrant vessels be done by the local inspectors, Steamboat Inspection Service, as being more in line with their duties than with the duties of customs officers?

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The conference recommended concurrence in the views expressed by the Department of Commerce to the effect that customs officers should continue the practice of admeasuring vessels.

(111) In suggesting amendments to the motor-boat law (act of June 9, 1910), would it be advisable to provide that two inspectors when acting together be authorized to arrest or seize unnamed motor boats found violating the law? It is very difficult, in most cases impossible, to serve libel papers on such boats because of the difficulty of identification.

The Department of Commerce does not approve the action suggested by the question, for the reason that it would require the services of a watchman or caretaker to take charge of the seized boat, and might involve a suit for damages in case of accident. That department also calls attention to a bill now pending before Congress which, if passed, will make it less difficult to identify unnamed motor boats.

(112) Should the forms for documents of vessels (registers, enrollments, and licenses) have spaces provided for inserting information relative to radio apparatus, date of expiration of certificate of inspection, and other information at times necessary in customhouses?

The Department of Commerce does not concur in the recommendation of the conference that the question be answered in the affirmative.

(113) Should collectors be permitted to receive checks drawn on banks in the same place, not certified, for collections on account of navigation fees and other small collections when they are satisfied that the checks are good and can be cashed without cost?

It was the sense of the conference that, from the standpoint of safety to the revenue, there is no objection to collectors accepting uncertified checks for such purpose, they being responsible for the collection thereof.

(114) Should the blank forms for transfers of vessels (bill of sale, mortgage, and satisfaction of mortgage) now furnished by the Department of Commerce be added to the blanks kept for sale under T. D. 33557?

The Department of Commerce has advised this department that it concurs in the recommendation of the conference that the question be answered in the affirmative.

(115) Should vessels be required to report, enter, and clear if only putting into a harbor on account of stress of weather, when neither the vessel nor the cargo are destined for such port of refuge?

The Department of Commerce has held that it would not be practicable to issue a general instruction that vessels in distress should not be required to report, enter, or clear. The landing of merchandise from such vessels must be governed by section 2867, Revised Statutes. The protest required by section 2891, Revised Statutes, and the report of the master within 48 hours after arrival appear practicable and necessary requirements in ordinary cases of distress.

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(116) Under present regulations has the collector power or authority to order and arrange that each port of issue of vessel documents within his district shall keep a complete index record of all transfers and incumbrances of vessel property for the entire district, the same as is now kept at headquarters ports only?

The conference was informed of the views of the Department of Commerce as follows:

The matter of recording mortagaes and bills of sale is covered by statute, and whether duplicate records shall be kept at the various ports of the districts are matters of instructions from this department. No reason is perceived why each subport should keep a complete record of the entire distric t, as it would involve considerable additiona expense and clerical labor. This department would not approve the proposition.

The conference also suggested that the collector of customs for Maine communicate with the proper authorities to the end that they may be acquainted with the peculiar situation in Maine.

(117) Disposed of by the action taken under 116.

(118) To what extent should the list of fees for "vessels navigating the waters of the northeastern and northwestern frontiers otherwise than by sea" be held to apply at ports and stations on the seacoast of Maine and Washington?

It was the sense of the conference that the words "otherwise than by sea" signify "otherwise than by salt water."

(119) Does it apply to any salt-water port?

The question was answered in the negative.

(120) If so, where should the dividing line be drawn? Should it be limited to navigation defined by the Steamboat-Inspection Service as "navigation of the bays, rivers, and harbors," as contrasted with ocean navigation?

The question was answered in the negative.

(121) Should American vessels with cargoes for Canada be allowed to come by sea under a coasting license to frontier ports on bays, rivers, and harbors adjacent to Canada and there exchange their licenses for a registry and clear for Canada without payment of clearance fees?

The Department of Commerce has under consideration the recommendation of the conference that such vessels, from the time of their departure at the initial port, should be under certificate of registry, and that fees should be collected on entrances and clearances.

(122) Should vessels with cargo laden at Canadian salt-water ports on bays, rivers, and harbors adjacent to our frontier and bound by sea to distant ports in the United States be allowed to enter at adjacent frontier ports in the United States without payment of any fees, and go forward to their destination under coastwise "permit to proceed," etc.?

This question was considered by the conference in connection with No. 121, and the Department of Commerce has the subject under consideration.

(123) Should not the Department of Commerce be requested to abolish report on Cat. 1004a, semiannual and annual recapitulation of tonnage?

The conference recommended that no change in present practice be made.

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(124) Should not Form 708, "Voucher for refund of special deposit, Department of Labor," be discontinued, and Forms 707 and 704, "Receipt for collection of head tax," Department of Labor, be published in similar form and make up to Cat. 1008, Department of Commerce?

The conference recommended that the question be answered in the affirmative; but the department is in receipt of advice from the Auditor for the State and Other Departments, to whom the matter was referred at the suggestion of the Secretary of Labor, which indicates that the changes suggested by the question are not regarded by him as being for the best interests of the accounting system.

(125) Under what circumstances are collectors of customs expected to enter into investigations of reports and complaints charging failure of steam vessels to carry requisite licensed officers, and any other alleged violations of the steamboat-inspection laws?

The conference recommended that when complaints are made in writing they be properly referred and immediately investigated.

(126) Suggested that the question, "Entrances and clearances of American vessels coastwise," again be considered and at least modified to the extent that any agent of the vessel, or one of his clerks, may clear said vessel after regular hours.

The conference recommended that the question be referred to the joint commission recommended under question 137.

(127) Suggested that the question of having tin tag numbers for motor boats again be considered, and that a recommendation be made that Congress take prompt action thereon.

The Department of Commerce has advised this department that a bill is now pending before Congress providing for the numbering of motor boats, but that it is problematical when the same will be reached for action.

(128) Should not the local inspectors be required, when a vessel is inspected in a district other than the district in which documented, to file with the collector of the district where the vessel is documented a certified copy of the original certificate of inspection, in addition to the copy filed with the collector of the district where the vessel is inspected, or in lieu thereof?

The Department of Commerce states that the number of copies of inspection certificates to be furnished gratis is limited by section 4421, Revised Statutes, as amended, and that it has been held by that department that a fee should be collected for additional copies.

(129) Should not the expense incident to admeasuring vessels in the interior be borne by the department instead of by the individual?

The question was answered in the negative.

(130) Suggested that Cat. Nos. 1267 and 1267A, "Record of certificates of registry of vessels"; Cat. No. 1274, "Record of consolidated certificate of enrollment and license"; and Cat. No. 1286, "Record of licenses of vessels under 20 tons," be abolished, and in lieu thereof suitable binders be furnished for insertion of triplicate copies of these documents.

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The conference approved the report of the efficiency board to the effect that wherever there is sufficient business to warrant it, the practice suggested should be adopted, it being already in vogue at a number of the larger ports.

(131) Suggested that book record of Cat. No. 1003 be abolished, and that Schedule 1005 be prepared in triplicate and the triplicate inserted in a suitable binder for office file.

The conference approved the suggestion. The Department of Commerce calls attention to the fact that Cat. No 1005 is now prepared in triplicate at the large ports, and states that it has no objection to other ports adopting the same method.

(132) See the answer to question 102.

(133) Should imports from Canada in undocumented ferry boats and other boats of less than 5 tons be reported as arriving in "cars and other land vehicles" or as per nationality and motive power of the boat?

The Department of Commerce has advised this department that it approves the recommendation of the conference that any importation or exportation by boat should be marked "vessel," with the nationality given, if known; and that such transactions should not be reported under "cars and other land vehicles."

(135) Should not lengthy printed vessel mortgages which do not conform with any of the printed forms provided be recorded as follows: A duplicate copy to be provided and pasted sheet by sheet or otherwise in the record instead of copying it into the record by typewriter, longhand, or otherwise?

The conference was informed of the decision of the Department of Commerce as follows:

The department has instructed the collectors of customs generally that mortgages need not be typewritten or written by hand in all cases in the record provided for the purpose. These mortgages may be firmly fastened in the book by permanent fasteners, it being determined beyond question that the copies so inserted in the book are exact copies of the original.

(136) Should not the checking of passengers embarking on passenger boats, to prevent overcrowding, be handled exclusively by or under the jurisdiction of the Steamboat-Inspection Service of the Department of Commerce?

The Treasury Department has been advised by the Department of Commerce that this matter will be handled under a separate communication.

(137) Suggesting the advisability of recommending the appointment of a commission to investigate and report on proposed changes in the navigation laws, relating to the documenting of vessels, and the entry and clearance of vessels in the coastwise and foreign trade, and to revise and codify these laws.

The conference recommended to the Department of Commerce that such a commission should consist of representatives from that department and the Treasury Department. The Department of Commerce now has the matter under consideration and has advised

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the Treasury Department that it involves numerous difficult questions which probably were not considered by the collectors at the conference.

QUESTIONS PARTICULARLY AFFECTING THE FRONTIER.

(140) To what extent are card manifests used for shipments by freight under article 445, Customs Regulations of 1908, and T. D. 34853? In such cases are copies of the special carrier's manifest delivered to the carrier and forwarded to the customs at the port of exit, or is reliance placed only upon the card manifest, without additional manifests?

It was recommended that the use of card manifests should be restricted to shipments by express. The subject is covered, however, by articles 706, Customs Regulations of 1915, and the department does not deem it necessary to make any change at this time.

(141 and 182) Should the use of Cat. No. 4835 be extended to include importations of coin and currency, irrespective of the value involved, as certified invoices are not required for such shipments, and the information is needed for statistical purposes only?

The department approves the recommendation of the conference that the question be answered in the affirmative and will take appropriate action.

(142) What is the practice at the various ports relative to requiring consumption entry for imported coin and currency, both United States and foreign?

Following the action taken on question 141, the conference recommended that where such shipments are not included in a consolidated entry they may be passed on Cat. No. 4835.

(144) Consolidated entries of goods arriving in one train from Canada do not now comply with article 1638, Customs Regulations of 1908, in that they have no column to show "country and place where invoice was dated," or "nationality and motive power of vessel in which same was brought to Canada."

(145 and 179) Should not columns be added to the consolidated entry forms for these data, thus saving the statistical clerks the task of examining every separate invoice?

(146 and 180) Should not the consolidated entry forms used by frontier steamship companies be also required to have a column for "country and place where invoice was dated"?

The department concurs in the recommendation by the conference as to questions 144, 145, and 146, that where the information can not be shown in the heading of the entry it should be inserted in the body of the entry, specifying the details of each invoice and the information required for statistical purposes in connection therewith. The motive power is not required to be shown.

(149) When merchandise in transit between ports in Canada through the United States for export via Alaska arrives at a port on the Canadian boundary, what kind of entry should be required, the present practice at different ports not being uniform, some forwarding the merchandise under article 445 and some under article 418, Customs Regulations of 1908?

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The department approves the recommendation by the conference that the practice should be uniform, and that all such shipments should be made under T. and E. entry.

PRACTICE UNDER DEPARTMENT OF LABOR.

(150) Should not the record of seizures, fines, penalties and forfeitures, for violations of the immigration and Chinese exclusion laws, now kept by collectors on Department of Labor Cat. No. 711, properly be kept by officers of the Immigration Service, and customs officers forward only abstracts of collections for moneys collected under this department?

The conference recommended that the question be answered in the negative and the present practice be continued.

PERSONNEL.

(151) Should not there be a greater uniformity at the various ports in making assignments for night service with extra compensation, and should not the need for such assignments be governed by the customs supervision deemed necessary to be given the same vessels during the day?

(152) Should not the department's regulations (T. D. 31562), promulgated under the act of February 13, 1911, be amended so that no assignments be authorized with extra compensation for supervising vessels arriving from foreign ports with entirely free cargo, either in bulk, sacks, bales, etc., no question of duty being involved and where none of the cargo is to be forwarded from the port of arrival in customs custody to other ports, provided the vessel's manifest indicates that there are no dutiable goods on board?

Questions 151, 152, and 160 were considered together, and it was recommended that collectors of customs be granted authority to waive, in their discretion, the assignment of inspectors where conditions warrant that procedure. The department is of the opinion that a customs inspector should not be assigned to the unlading of a vessel at night, when no inspector is assigned to such vessel by day, and that in general the discharge of free cargo in bulk should be under the supervision of the district inspector, with no charge for unlading at night.

(153) Should not the department amend its regulations relative to the charge for extra compensation under the act of February 13, 1911, and base the same upon a flat rate per hour (with a minimum charge for services), instead of by the day?

The question was referred to the department for such action as might be deemed proper and the matter is being given consideration.

(154) Should not section 5 of the act of February 13, 1911, be amended so as to extend to employees and clerks the same privileges that are given by the act to inspectors, storekeepers, and weighers, and other customs employees, with respect to extra compensation for night service and service on Sundays and holidays in connection with entering and clearing vessels or merchandise after hours or at night?

The conference recommended that the law be amended, as suggested by the question, and the department will give consideration to the subject.

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(155) Should storekeepers in bonded manufacturing warehouses, class VI, be required to work on holidays or at night without extra compensation?

The department will carefully consider the recommendation by the conference that the present law be amended so as to provide compensation for these services, to be paid for by the parties in interest.

(156) Would the changing of designation from storekeeper to deputy collector and storekeeper or storekeeper and inspector permit them to charge night service under the act of February 13, 1911?

The department concurs in the opinion expressed by the conference that the mere change of the designation would not permit a charge for night service unless the character of the work performed fell within the terms of the act, in which event the officer would be entitled to extra compensation under the former designation.

(157) Is it advisable to employ messenger boys instead of messengers?

The question was answered in the affirmative by the conference.

(160) Is the payment for services of inspectors during the discharge of small fishing vessels at night or on Sundays and holidays warranted when the entire cargo consists of live lobsters, free of duty?

The question was considered in connection with numbers 151 and 152 and similar action taken thereon.

(161) Would it not be possible to pay all reimbursable amounts from a special fund, or preferably make a special deposit of the above fund—this would include traveling expenses of examiners and salaries of storekeepers of private bonded warehouses?

It was the opinion of the conference that such a practice would be desirable, although not permissible under the law. A change in the law has been recommended by the department, but as yet has not been adopted.

(162) Should not the traveling expenses of customs officers incurred in unlading and examination of merchandise at places other that the port of importation, which are collected from importers under T. D. 5680, be deposited in the collector's special deposit account instead of to the credit of the Treasurer of the United States, so that when the services have been performed, payment may be made immediately to the officer by the collector from his special deposit account, thereby avoiding the delay incident to making the payment from the appropriation, "Expenses of collecting the revenue from customs"?

The conference recommended that the question be answered in the affirmative. The department has submitted the question to the Comptroller of the Treasury for a ruling, and that officer has held, under date of December 7, 1915, that the collections on account of these expenses can not be deposited in a special account, for the reason that section 3617, Revised Statutes, requires that they be deposited as miscellaneous receipts (14 Comp. Dec., 87; 68 MS. Comp. Dec., 1077, Feb. 16, 1914). Such expenses, therefore, must be paid from the appropriation, "Collecting the revenue from customs," and the amount

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collected in reimbursement thereof deposited as "Miscellaneous receipts."

(163) It is suggested that customs officers at subports, where only one officer is detailed, be authorized to take the oath required by article 1404 of the Customs Regulations of 1908 before a postmaster.

The department concurs in the opinion expressed by the conference that postmasters are authorized under the provisions of T. D. 32817 to administer such oaths.

(164) Discuss the matter of bonding subordinates of deputy collectors in charge.

The question was submitted to the Solicitor of the Treasury, who is of the opinion that deputy collectors under the bonds as now executed by them are not liable for losses sustained by collectors through wrongful acts of subordinates of such deputy collectors; and that a collector could, with the sanction and approval of the Secretary of the Treasury, require bonds from such subordinates for his protection notwithstanding the fact that the said subordinates are in the classified service. The department will consider the advisability of such action.

(165) When Saturday is made a half holiday by the laws of the State, should the closing hour at customhouses and appraisers' stores be at 12 or 1 o'clock?

The department concurs in the recommendation of the conference that the laws of the State in which the customhouse is situated be followed.

(166) Should not the official designations of officers and employees in the customs service be materially reduced, and such designations made to conform, as nearly as possible, to the nature of the services actually performed by such officers and employees?

The conference approved, and the department concurs in, the opinion of the efficiency board that the official designations of officers and employees should be materially reduced and the new designations made to conform as nearly as possible to the services actually performed. All collectors and other principal officers of the customs are, therefore, instructed to prepare and forward to the department lists of all employees in their offices, showing their salaries, their present official designation, a specific statement of the various duties performed by them, and suggested designations. When the information requested above has been received and compiled it will be given careful consideration and appropriate action taken.

RECORDS AND BLANKS.

(167) Should not Cat. 3419, "Entry of merchandise imported through the mails," have a space for the name of the shipper of parcel-post packages?

The conference approved the change suggested, and steps already have been taken by the department to put the suggestion into effect.

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(168 and 172) Should not Cat. 4835, "Informal entry and receipt," used for the entry of small importations, in accordance with the recommendation of the last collector's conference, as approved by the department, be printed in a more convenient and appropriate form?

The question was answered in the affirmative, with the recommendation that the district of Maryland submit an appropriate form to the department, to be submitted to other ports for consideration and suggestions, with the view of devising a form which may meet the requirements of all ports. The matter now is under consideration by the department.

(169) Should more forms of bonds be provided in the customs catalogue?

The question was referred to the department, which is of the opinion that the number of forms should be decreased if possible, instead of increased.

(170) Should not refund of protest and reappraisement fees be noted on record of protests and appeals, showing date of each refund?

The conference was of the opinion that such a practice would involve a great deal of clerical labor without accomplishing any good purpose.

(171) Should Cat. No. 7541, "Free entry," be abolished and regular consumption entry blank, Cat. No. 7501, be used in entering household goods, tools of trade, and other goods which are now entered on Cat. No. 7541, the appropriate oath to be attached to the consumption entry as is now done in the case of United States goods returned?

The department concurs in the views expressed by the conference that Cat. No. 7541, "Free entry," should not be abolished. Ports having no special use for this form can use the regular consumption entry (Cat. 7501) exclusively, attaching thereto the appropriate oath.

(173) Suggested that a uniform style of certification should be adopted for reporting the clearance of cars containing merchandise in transit between ports in Canada, through the United States, article 445, Customs Regulations of 1908, it being noted that cars arriving at Minnesota Transfer without proper United States seals, or seals broken, are resealed without checking the merchandise in the manifest, and a certificate made to the effect that the car was received with seals in bad order, and merchandise not checked, and resealed by the officers there with a tin seal.

The matter was referred to the department for proper instructions. The department is of the opinion that a strict compliance with article 706, Customs Regulations of 1915, will meet all the requirements, except in cases of cars arriving at a port of exit from Minnesota Transfer, under conditions specified above, in which cases the seals should be removed and the contents checked before exportation, and the collector at the first port of entry advised of any shortage found, in order that the proper charge may be made against the common carrier.

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(174) Suggested that a record of transactions in the form kept by the district of Michigan, and also an office summary of the receipts from all ports in the district be made in such a way as to be self explanatory.

The question was referred to the efficiency boardfor action.

(175) Should a separate record for preliminary entries or notice for drawback be provided and added to the catalogue of books and blanks?

The department will consider the recommendation by the conference that a separate record for notices of intent should be provided.

(176) Suggested that an appropriate form of baggage declaration be provided for nonresidents arriving in the United States from contiguous territory (printed in both English and Spanish for use on the Mexican border) for the purpose of facilitating investigations of suspected frauds in connection with baggage importations.

The conference approved the suggestion and the department will give consideration thereto.

(177) Suggested that transportation companies issuing special customs manifests for the shipment of goods in transit through Canada under article 434, Customs Regulations of 1908, be required to furnish a suitable envelope to contain the manifest, and thus prevent it from being soiled and mutilated.

The conference approved the suggestion and the department suggests that bonded carriers be requested to furnish such envelopes.

(178) It is suggested that the department prepare and issue for customs purposes a standard blank form of power of attorney, to be supplied on requisition to the several customs districts, there to be sold on demand and accounting therefor to be made as in the case of consumption entry blanks.

The suggestion was approved by the conference, with the provision that a standard form of power of attorney be prepared, containing all the various powers ordinarily conferred in a complete power of attorney. The department will prepare such a form.

(179 and 180) See the answers to questions 145 and 146.

(181) Should the practice of making "Inspector's return of merchandise unladen" on the master's copy of the inward foreign manifest of a vessel not be changed so as to require from the inspector a special return, following the practice of the weigher and and the gauger in their special returns on form Cat. Nos. 5985 and 6017, respectively, proposed special return to be made for each consignment immediately after the delivery in full?

The department concurs in the recommendation of the conference that the question be answered in the negative.

(182) See the answer to question 141.

(183) Suggest the adoption of a system of flat filing of consumption and other forms of entries, the entries and invoices to be handled flat while passing through the various processes prior to liquidation.

The question was referred for consideration by the department, which is of the opinion that the system of filing to be adopted depends to some extent upon the volume and class of business transacted. The question will be referred to the efficiency board for consideration.

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(184) Suggest the consolidation of customs Cat. 3859, "Report of baggage shipped in bond under card manifest" (T. D. 31311) and customs Cat. 6055 "Report of baggage forwarded in bond" (T. D. 34882). This may be effected by providing for report of exemptions on Cat. 6055.

The department concurs in the recommendation by the conference that Cat. 3859, as provided in T. D. 31311, be discontinued, and that Cat. 6055, as provided in T. D. 34882, be amended by providing a space for the return of exemption allowed to returning residents of the United States. The necessary action will be taken by the department.

(185) Suggest revision in the form of drawback debenture certificate (Cat. 4487), so that two or more entries by the same claimant may be embraced in one debenture certificate.

The conference recommended that the law should be amended so as to provide for the payment of drawback by check, as in the case of excess of deposits, and that until the amendment of the law the present debenture certificate (4487) should be amended so that two or more entries by the same claimant may be embraced in one debenture certificate. The department does not deem it advisable to change the form of debenture certificate 4487 at present, but will take under consideration the suggested amendment of the law.

(186) Should not a form be supplied for the exportation of teams of animals and vehicles going to and returning from Canada, similar to the form now in use for automobiles, Cat. 3307?

The conference recommended that such a form be provided. The department will consider the matter further, to determine whether the necessity for such a form is sufficient to justify its adoption.

(187) Suggested that a new form of Cat. No. 4835 be supplied, with sheets 8 by 10½ inches in size, bound in book form, 400 sheets to the book, in quadruplicate, in view of the various purposes for which the form is used.

The suggestion was considered in connection with question 168 and similar action taken thereon, the size mentioned being approved by the efficiency board.

(188) Suggested that customs Cat. No. 4829 should be prepared in such a way as to avoid confusion and simplify its preparation in reporting separately collections for the Treasury Department and also the Departments of Commerce and Labor.

The conference recommended that this form should be modified so as to separate the collections for the Treasury Department and for the Departments of Commerce and Labor, and that the new form should be made in pads gummed at the upper end so that naval office ports could insert carbon to make one or more copies, one of which may be stamped with the date of payment and issued as a receipt when demanded by the payor. The department will make the necessary changes.

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REPORT BY EFFICIENCY BOARD ON QUESTIONS SUBMITTED BY THE COLLECTORS' CONFERENCE OF 1914, WHICH WAS ADOPTED BY THE CONFERENCE OF 1915 IN ITS ENTIRETY, AND IS APPROVED BY THE DEPARTMENT.

Question 7, administration (p. 35), minutes of 1914.—If an importer, in order to procure immediate examination by the appraiser, is willing to pay for the cartage of packages designed for examination at the appraiser's stores to be carted by a bonded cartman other than the cartman having the general contract therefor, should not the privilege be granted and the saving in cartage expense to the Government effected?

The efficiency board disapproved the plan suggested and recommended that the collector expedite the transfer of examination packages by the bonded cartman in proper cases.

Question 5, baggage (p. 67), minutes of 1914.—Should not the law relative to affixing internal-revenue stamps to cigars and cigarettes brought in by passengers be so amended as to permit the boxes or packages to be stamped with an appropriate rubber stamp indicating that all charges have been paid? The internal-revenue stamps might either be destroyed afterwards or affixed to the declaration.

The efficiency board recommended that the law be amended as suggested, and the department will take the matter under consideration.

Question 5, practice under Department of Commerce (p. 82), minutes of 1914.—In view of the fact that section 4498, Revised Statutes, requires that no document shall issue to a vessel requiring a certificate of inspection, until such certificate is on file with the collector of customs, should not section 4421, Revised Statutes, be amended so as to require the inspector's certificate to be made to the collector at the port at which the vessel is documented, or else should not the local inspectors be required to issue a duplicate of the original certificate of inspection to the chief officer of the customs of the port at which the vessel is documented?

It was the sense of the efficiency board that the Department of Commerce should prescribe regulations for the issuance of an extra copy of the certificate of inspection, to be delivered to the master of the vessel, and produced by him to the collector of customs upon application for the issuance or renewal of marine documents. The collectors interested should take the matter up with the Department of Commerce.

Question 16, practice under Department of Commerce (p. 134), minutes of 1914.—Should not article 1608, Customs Regulations of 1908, be amended by requiring shippers' manifests to be filed not later than three business days after clearance of vessels, instead of four days, and by penalizing the shipper for failure to comply with the requirements of the article?

T. D. 35708, as amended by T. D. 35969, prescribes regulations for the filing of shippers' export declarations.

Question 49, practice and general application (p. 301), minutes of 1914.—Should not general regulations be issued providing for the delivery from the appraisers' stores by examiners of merchandise of all packages which are found to be correctly entered as to value and classification, immediately after examination, according to the practice now in operation at the port of New York?

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The efficiency board was of the opinion that the New York system, or such modification thereof as may be required to meet the conditions existing at other ports, should be adopted. This question now is receiving the attention of a special committee of appraising officers appointed by the department to visit the larger ports.

Question 2, records and blanks (p. 341), minutes of 1914.—Cat. No. 4975-B gives about all the essential information needed for a complete report in a little briefer form than Cat. No. 5059. Can not one or the other of these forms be adopted, and the other discontinued?

The efficiency board made no recommendation on this question because the same subject would be before the conference of 1915 for consideration. See question 11, 1915, which was referred back to the efficiency board.

Question 9, records and blanks (p. 414), minutes of 1914.—Should not a record be provided to show the disposition by headquarters ports of entry papers received from ports of entry, in accordance with a form submitted with the question?

No action was taken on this question by the efficiency board, because of related questions to be disposed of by the conference of 1915.

Question 18, records and blanks (p. 419), minutes of 1914.—Are all entries in the district recorded at the headquarters in "Record for entries, etc." Cat. 5059, such as entries for withdrawal from warehouse for consumption; rewarehouse and withdrawal entries, etc., or only consumption and warehouse entries as mentioned at head of second column in that book? If so, why should not the heading read "Entry, Con. W. H. etc.," instead of "Entry, Con. or W. H." as now shown?

See action taken on question 2, records and blanks, 1914.

Question 37, records and blanks (p. 455), minutes of 1914.—Should not the various schedules of disbursements (Pay rolls and public vouchers, Cat. 4995-a and b, Drawbacks Paid, Cat. 5011 and 5013; Excess of Deposits, Cat. 5009-a and b, and Disbursements for Night Service, etc., Cat. 5021), be combined into schedule (Cat. 4995), provisions to be made to show the accountable warrants and disbursements for various purposes, and a carbon copy thereof kept in place of the "Register of advances and disbursements," Cat. 4903-a, prescribed in T. D. 33227, of February 25, 1913?

The question was answered in the negative.

(100064-2.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 36331.)

Drawback on shrapnel shells.

T. D. 35842 of October 30, 1915, relative to shrapnel shells manufactured by the Bethlehem Steel Co., of South Bethlehem, Pa., corrected.

TREASURY DEPARTMENT, *April 19, 1916.*

SIR: The next to the last paragraph of department's regulations of October 30, 1915 (T. D. 35842), providing for drawback on shrap-

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nel shells manufactured by the Bethlehem Steel Co., of South Bethlehem, Pa., is hereby corrected to read as follows:

The allowance shall not exceed the quantities of dutiable metals used in the manufacture of the exported shells, as shown by the certificate of manufacture prescribed above and certificates of manufacture and delivery filed in connection therewith, the allowance for waste to be reduced according to the quantities of imported material which the value of the dross will replace.

Respectfully, WM. P. MALBURN,
(58807.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36332.)

Disinfection of hides.

T. D. 30583 (Circular 23) of May 2, 1910, amended so as to permit the shipment of hides without disinfection under certain conditions, the disinfection to be made after the arrival of the hides in the United States.

TREASURY DEPARTMENT, *April 20, 1916.*

To collectors of customs:

Collectors of customs are informed that in accordance with an arrangement made by the Department of Agriculture, foreign hides which can not be certified by an American consul as coming from a district in which neither foot-and-mouth disease nor rinderpest exists and in which anthrax is not prevalent, may be shipped after the bales of hides have been whitewashed under consular supervision, subject to disinfection after arrival at destination in this country.

The procedure upon the arrival of such hides in the United States will be as provided in T. D. 36188 of February 25, 1916, in the case of hides arriving without a disinfection certificate, namely: The importer may make application to the department for permission to disinfect the hides at his tannery. If the importer has the proper facilities the Department of Agriculture will permit such disinfection under the supervision of an inspector of the Bureau of Animal Industry, and the collector of customs, upon being so advised, shall permit the hides to go forward from the port of entry to the tannery under customs seals, notification of such action to be sent to the inspector of the Bureau of Animal Industry designated to supervise the disinfection.

The Secretary of Agriculture states that the disinfection of the hides at the tannery will be accomplished in suitable vats under supervision of a representative of the Bureau of Animal Industry of the Department of Agriculture by immersion in a 1 to 1,000 bichloride of mercury solution for not less than 48 hours.

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Hides which can be properly certified by an American consul or consular agent of the district from which shipped, as from a district in which neither foot-and-mouth disease nor rinderpest exists and in which anthrax is not prevalent, will not require disinfection at destination or be subject to other restrictions.

T. D. 30583 (Circular 23) of May 2, 1910, is amended accordingly.

(74465.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 36333.)

Drawback on ribbons, silks, silk chiffons, etc.

Drawback on ribbons, silks, silk chiffons, and silk malines manufactured by one or more processes by various manufacturers for the account of Wertheimer Bros., of New York, N. Y.—T. D. 32115 of December 23, 1911, and T. D. 32307 of March 14, 1912, revoked.

TREASURY DEPARTMENT, *April 20, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on imported ribbons, silks, silk chiffons, and silk malines exported after having been manufactured by one or more of the processes known as printing, dyeing, embossing, moireing, crêping, crimping, flocking, faggot or other stitching, appliquéing, embroidering, beading, plaiting, wire binding, edging, or otherwise ornamenting or finishing, by W. H. Mayer & Sons, Jos. Loth & Co., the J. Adler Manufacturing Co., the Lyons Piece Dye Works, S. Gardner & Son, and the Werbro Ribbon Manufacturing Co., for the account of Wertheimer Bros., of New York, N. Y.

A record shall be kept by each manufacturer named, which will show, in the case of each lot of articles manufactured for the account of Wertheimer Bros., the manufacturer's order number and the owner's lot number thereof, the date and mode of manufacture, the kind and quantity of imported material used, the character and quantity of finished product obtained, and the quantity of imported material appearing therein. If an allowance to compensate for waste is to be claimed, the manufacturers' records shall also show the quantity, character, and value of the waste resulting.

Wertheimer Bros. shall keep a record showing, in the case of each lot of articles manufactured for exportation with benefit of drawback, the serial lot number and date of manufacture thereof, by whom manufactured, the character and quantity of the finished product obtained, and the quantity, character, value, and identity of the imported material appearing therein.

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A sworn abstract from the manufacturer's record shall be filed with the drawback entry.

To complete the record, and in order that the manufacturer may properly issue a certificate of manufacture and delivery, the owner of the imported merchandise shall issue to the manufacturer a certificate of delivery in the form prescribed in article 872 of the Customs Regulations of 1915.

In liquidation, the quantity of imported material which may be taken as the basis for allowance of drawback may equal the quantity appearing in the exported article, with an addition to compensate for waste as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

The sworn statements of W. H. Mayer & Sons, S. Gardner & Son, the J. Adler Manufacturing Co., Wertheimer Bros., the Lyons Piece Dye Works, the Werbro Ribbon Manufacturing Co., and Jos. Loth & Co., dated March 17, 25, 28, 29, and 30, 1916, are transmitted herewith for filing in your office.

The above regulations will be extended to cover the articles specified therein manufactured by the manufacturers named for the account of others, upon application of the owner of the imported materials.

T. D. 32115 of December 23, 1911, and T. D. 32307 of March 14, 1912, are hereby revoked.

Respectfully, WM. P. MALBURN,
(91318.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36334.)

Drawback on cigarettes.

Drawback on cigarettes manufactured by the Makaroff Cigaret Co., of Boston, Mass., with the use of imported tobacco.—T. D. 31057 of November 22, 1910, revoked.

TREASURY DEPARTMENT, *April 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarettes manufactured by the Makaroff Cigaret Co., of Boston, Mass., with the use of imported tobacco.

The allowance shall not exceed the quantity of imported tobacco appearing in the exported cigarettes, as shown by the sworn statement of the manufacturers, dated April 13, 1916, which is transmitted herewith for filing in your office.

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Supplemental sworn statements covering other brands of cigarettes may be filed, and upon verification thereof drawback may be allowed on the cigarettes covered by such statements.

T. D. 31057 of November 22, 1910, is hereby revoked.

Respectfully, WM. P. MALBURN,
(61742.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36335.)

Drawback on wearing apparel.

T. D. 36276 of March 31, 1916, amended as to the quantity of imported material to be allowed in the liquidation of drawback entries filed thereunder.

TREASURY DEPARTMENT, *April 21, 1916.*

SIR: The last paragraph of the department's instructions of March 31, 1916 (T. D. 36276), providing for drawback on wearing apparel manufactured by the C. Kenyon Co., of Brooklyn, N. Y., with the use of imported cloths, is hereby corrected to read as follows:

The allowance shall not exceed the quantity of imported cloth used in the manufacture of the exported wearing apparel, as shown by an abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

Respectfully, WM. P. MALBURN,
(59427.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36336.)

Drawback on tobacco.

Drawback on shredded tobacco manufactured by B. D. Dugundji, of New York, N. Y., with the use of imported Turkish leaf tobacco.

TREASURY DEPARTMENT, *April 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on shredded tobacco maunfactured by B. D. Dugundji, of New York, N. Y., with the use of imported Turkish leaf tobacco.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated April 4, 1916, transmitted herewith, which will show, in the case of each lot of shredded tobacco manufactured for exportation with benefit of drawback, the date of manufacture thereof, the quantity and iden-

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tity of Turkish leaf tobacco used, and the quantity of shredded tobacco produced therefrom. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of Turkish leaf tobacco used in the manufacture of the exported shredded tobacco, as shown by the abstract from the manufacturing record.

Respectfully, WM. P. MALBURN,
(104650.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36337.)

Drawback on motorcycles.

Drawback on motorcycles manufactured by the Hendee Manufacturing Co., of Springfield, Mass., with the use of imported carburetors.

TREASURY DEPARTMENT, *April 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on motorcycles manufactured by the Hendee Manufacturing Co., of Springfield, Mass., with the use of imported carburetors.

The allowance shall not exceed one imported complete carbureter, including tube connections, spray plugs, and control levers, for each motorcycle exported.

The sworn statement of the manufacturers, dated April 11, 1916, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(102390-3.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36338.)

Declarations—Entry.

The consignee of goods sold at a price delivered, who acts as agent of the shipper for the delivery thereof, may make the declaration as ultimate consignee on Form 3347, or he may give bond for the production of the declaration of the purchaser.

TREASURY DEPARTMENT, *April 17, 1916.*

SIR: The department refers to your letter of February 28, 1916, transmitting a communication from Messrs. S. & Co., relative to the declarations to be filed upon the entry of merchandise sold in this country at a delivered price in dollars and cents.

It appears that the shippers of such merchandise have no branch house or established agency in the United States other than Messrs.

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S. & Co.; that the merchandise is sold by traveling salesmen of the manufacturers, who visit this country from time to time, and the orders are taken at prices delivered to the purchasers, including the customs duties, and with the understanding that such purchasers will not be required to attend to any customs formalities.

It was formerly the practice to ship such merchandise invoiced on the consigned form to Messrs. S. & Co. for entry and delivery, but upon the attention of said firm being invited to the fact that under the existing regulations, the merchandise having been shipped to the United States in pursuance of a purchase, it should be invoiced upon the purchase form and the price actually paid or agreed to be paid therefor stated. The practice was changed to conform to the regulations, but a question has arisen as to the form of declaration to be filed upon entry.

In T. D. 34283 the department provides that in the case of merchandise imported pursuant to a purchase or agreement for its purchase at a price delivered in the United States and consigned to an agent or branch house of the shipper for entry and delivery, the consignee named in the bill of lading may make the declaration as ultimate consignee on customs Form No. 3347 or he may make the declaration on Form No. 3345 and give a bond for the production of the declaration of the purchaser on Form No. 3349.

This provision was made in order to meet just such cases as the one now presented. Prior to such regulations being adopted it was represented to the department that it frequently occurred that merchandise was sold, usually in small quantities, upon a price delivered in the United States; that the purchaser had no knowledge of any of the facts required to be stated on the entry of imported merchandise other than that he had given an order to a salesman for certain goods to be delivered to him at his place of business at a price agreed upon; that the purchaser frequently did not know whether the merchandise was to be imported or whether it was to be taken from a stock on hand in this country; that he made his purchases at a price delivered for the express purpose of avoiding the expense and trouble incident to the passing of his merchandise through the customs; and that such purchasers could not be induced to sign a customs declaration. The department, therefore, provided in such cases that the consignee named in the bill of lading might make the declaration on Cat. No. 3347 as the ultimate consignee. The mere fact that Messrs. S. & Co. are customs brokers is immaterial. Customs brokers may and frequently do act as forwarding and distributing agents. If they elect to assume responsibility for the truthfulness of the statements in invoices and entries, and also to assume liability for any false statements in such documents, they are permitted by the regulations to do so. The invoice must state the name of each pur-

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chaser, and the collector or appraiser may, if he deems it necessary, call upon such purchasers for a statement as to the facts of the transaction under paragraph O of section 3 of the existing tariff act.

As Messrs. S. & Co. are the consignees named in the bill of lading and act as the agents of the shipper for the importation and deliver the said merchandise, they may be permitted to file declaration on Form No. 3347 as is provided in T. D. 34283.

Respectfully, WM. P. MALBURN, *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36339—G. A. 7885.)

Manufactures of aluminum.

An importation consisting of many thousands of pieces of aluminum foil, all of which have been cut to the same specific dimensions from larger pieces as a result of special orders to the manufacturers given with a view to eliminating all possible waste in the sole and ultimate use for which the imported articles are employed, to wit, to be affixed to cards of various sizes on which pearl buttons are mounted, is properly dutiable at the rate of 20 per cent ad valorem under paragraph 167, tariff act of 1913, as articles composed wholly of aluminum, partly manufactured, as classified by the collector, rather than at the rate of 3½ cents per pound under the provision in paragraph 143 of said act for "aluminum in * * * sheets," as claimed by the importers.

United States General Appraisers, New York, April 17, 1916.

In the matter of protest 772166 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Curie, Smith & Maxwell (*Herbert M. Wallace* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The invoices describe the merchandise under protest as "leaves, aluminum foil." Duty was levied thereon at the rate of 20 per cent ad valorem under the provision in paragraph 167 of the act of 1913 for "articles or wares not specially provided for in this section; * * * if composed wholly or in chief value of * * * aluminum, * * * whether partly or wholly manufactured." It is claimed to be properly dutiable at the rate of 3½ cents per pound under paragraph 143 of said act as "aluminum in * * * sheets."

From the evidence it appears that the merchandise consists of thousands of pieces of aluminum foil, 9 inches wide, 21 inches long, and one one-thousandth of an inch thick, to which specific dimensions they have been cut from larger pieces in compliance with special orders to the manufacturers given with a view to eliminating all possible waste in connection with the sole and ultimate use for which

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the imported articles are intended to be employed, to wit, to be affixed to cards of various sizes on which are mounted pearl buttons.

Furthermore, it appears from the testimony of the witnesses who appeared on behalf of the importers that articles of precisely similar character to those here involved are sometimes invoiced as "sheets" and sometimes as "leaves." Their testimony, however, falls far short of establishing any commercial designation under which the merchandise may be said to be definitely, uniformly, and generally known and recognized throughout the trade in this country.

On the other hand, there is ample proof submitted by the Government that these articles are commercially known and dealt in as pieces of aluminum foil and never as sheet aluminum; that the latter term, as understood in the trade and commerce of this country, applies solely to large pieces of aluminum of indefinite length which have been rolled in aluminum sheet mills, and the edges of which only are trimmed.

As defined by the Standard Dictionary, "foil" is a term applied to "metal in very thin pliable sheets or leaves," and by Webster as referring to "a leaf or very thin sheet of metal." And the term "sheet," as defined by the latter authority, signifies "a broad, thinly expanded portion of metal or other substance." It would therefore appear that, at least within the common and ordinary acceptation of the terms, they are more or less synonymous in meaning. The trade understanding of the term "sheet," however, seems to be definitely confined to the product of sheet mills, and that is the view which the court and the board seem to have adopted.

In the case of Guiterman, Rosenfeld & Co. *v.* United States (5 Ct. Cust. Appls., 514; T. D. 35155), wherein precisely the same issue here raised was presented, except that the particular merchandise there involved consisted of aluminum disks, the United States Court of Customs Appeals, after discussing at length the legislative history of paragraph 143, detailed the various stages of manufacture leading up to the production of what is known as a sheet in the aluminum trade. The court there said:

This record defines the method of aluminum manufacture. It seems to make its first commercial appearance in the block forms, which vary in size, the variances being intentional according to the size of a sheet, plate, bar, rod, or other form of aluminum which is to be produced from the block. To produce the latter the block is heated and passed through rolls, which is called a breaking-down process. This process is continued until the product is of the desired thickness. The resultant rough edges are cut, trimmed off, or flattened out, whereby is produced what is known as "sheets" and "strips." From these sheets and strips in turn are produced among other things these importations. It appears from the record that their size is controlled by the specific order, as they are made in any size only according to order, which could be for no other purpose or reason than to fit a certain requirement in use, thereby becoming as imported part of a completed article. This is true also of squares and oblongs and possibly other specifically ordered shapes, forms, or sizes of aluminum. Whatever

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confusion of the respective names may occur in the record, it satisfactorily appears that the above-stated steps of manufacture and customs of trade in ordering are uniformly exercised in order to produce aluminum circles or disks. It likewise appears that it is more expensive to produce a circle than it is a square or oblong.

The manufacturing processes above described as to the method of producing aluminum sheets differ in no essential feature from those disclosed in the record herein, except that in order to produce the aluminum foil here in question it is necessary that the aluminum sheets be further subjected to special rolling process in addition to that given in the sheet rolling mill.

In the case of United States *v.* Universal Shipping Co. (4 Ct. Cust. Appls., 245; T. D. 33479), which arose under paragraph 172 of the act of 1909, the same tribunal judicially defined the word "sheet" as a term which "is ordinarily applied to a broad general surface, and in the connection in which it is used in paragraph 172 may fairly be said to mean the sheet of the metal made in that form as one of the developments in the process of manufacture, and not intended to include the articles made from such sheets."

This latter decision, as pointed out by the court in the Guiterman case, *supra*, was before Congress at the time of the enactment of the present tariff act, and must be deemed to have received due consideration at the hands of the legislature. It is therefore strongly persuasive that it correctly interpreted the will of the lawmakers as expressed in paragraph 172 of the act of 1909, since it appears that the only change in the language of the present paragraph 143 excepting, of course, the difference in the rates of duties imposed, is the mention therein of the word "strips," which did not appear among the articles enumerated in said paragraph 172.

Inasmuch, therefore, as the articles in question are shown to have been made from sheets of aluminum foil, by reason of being cut therefrom to specific dimensions for certain definite purposes, they must, under the decisions above cited, be deemed to have lost their identity as sheets of aluminum and to have become articles composed wholly of aluminum, partly manufactured, and as such are properly classifiable under paragraph 167 of the present tariff act.

The protest is therefore overruled and the decision of the collector affirmed.

(T. D. 36340—G. A. 7886.)

Bagging patches.

1. Pieces of old bagging used for patching cotton bales, consisting of plain woven jute fabrics "not exceeding 16 threads to the square inch, counting the warp and filling, and weighing not less than 15 ounces per square yard," upon which a few letters or identification marks have been stenciled, are not "printed," and are free of duty under the first section of paragraph 408 of the tariff act of 1913.

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2. Pieces of old bagging used for patching cotton bales, made by cutting or tearing apart old bags made from a twilled fabric containing more than 16 threads to the square inch, and having a colored stripe 1 inch in width running down the center, are substantially dyed or colored and are not of the texture or character of fabrics provided for in paragraph 408, tariff act of 1913. *Held* to be dutiable as "waste, not specially provided for" at 10 per cent ad valorem under paragraph 384.

United States General Appraisers, New York, April 17, 1916.

In the matter of protests 795468-6771, etc., of J. G. Martin, jr., *et al.* against the assessment of duty by the collector of customs at the port of New Orleans.

[Reversed.]

Hawley & Letzerich (Harry Hawley of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*John R. Rafter*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* These two protests cover pieces of jute fabrics suitable and intended to be used as patches for cotton bales. They were classified as manufactures of vegetable fiber and returned for duty at 35 per cent as valorem under paragraph 284 of the act of 1913. It is claimed that they are free of duty under paragraph 408, which is as follows:

408. Bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, jute butts, seg, Russian seg, New Zealand tow, Norwegian tow, aloe, mill waste, cotton tares, or other material not bleached, dyed, colored, stained, painted, or printed, not exceeding sixteen threads to the square inch, counting the warp and filling, and weighing not less than fifteen ounces per square yard; plain woven fabrics of single jute yarns by whatever name known, not bleached, dyed, colored, stained, printed, or rendered noninflammable by any process; and waste of any of the above articles suitable for the manufacture of paper.

Protest 796923 contains the further claim that the merchandise is dutiable at 10 per cent ad valorem as "waste, not specially provided for" under paragraph 384.

The merchandise covered by the two protests is not of exactly the same character. That covered by protest 795468 consists of pieces of a plain woven jute fabric, about 36 by 54 inches in dimensions, the count of threads and weight per square yard corresponding with that described in the first part of paragraph 408, while the merchandise covered by protest 796923 consists of pieces of a twilled jute fabric, much finer in texture, about 28 by 36 inches in dimensions, which have been cut or torn from old bags having a colored stripe running down the center.

The samples of the merchandise covered by both of the protests have identification marks, consisting of a few letters stenciled thereon, by reason of which the collector deemed that they were excluded from the provisions of paragraph 408 by the words "not bleached, dyed, colored, stained, painted, or printed."

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In the case of Wolff & Co., G. A. 7098 (T. D. 30930), the board held that pieces of material, of the same character as that covered by protest 795468, upon which were stenciled the words "Harby" and "Wolff" for purposes of identification, were not printed within the meaning of paragraph 355 of the act of 1909, and, in the case of Mente & Co., G. A. 7705 (T. D. 35268), the board held that second-hand jute bags having similar identification marks stenciled thereon were not printed within the meaning of the excluding provisions in paragraph 281 of the act of 1913. Upon the authority of said decisions we hold that the bagging patches in question are not "printed" within the meaning of that term as used in paragraph 408.

The pieces of bagging covered by protest 795468 are fabrics of the texture, count of threads, and weight per square yard described in the first part of paragraph 408, and we hold that they are free of duty under said paragraph, said claim in protest 795468 being sustained.

The merchandise covered by protest 796923, however, is not merchandise of the character described in paragraph 408. In the first place, it is colored by reason of the colored stripe running down the center of each piece (*In re* Myers, G. A. 5105; T. D. 23618); in the second place it contains more than 16 threads per square inch, being thereby excluded from the first part of the paragraph; third, it is a twilled fabric and not plain woven, being thereby excluded from the second part of the paragraph; and, fourth, under the ruling in United States *v.* Crompton (6 Ct. Cust. Appls., 197; T. D. 35442), it is not waste of any of the articles named in the paragraph provided for in the third section of the paragraph. This grade of bagging has for many years been classified and held dutiable as "waste, not specially provided for"—Train-Smith Co. *v.* United States (140 Fed., 113; T. D. 26484); United States *v.* Davies (160 Fed., 456; T. D. 28951); *In re* Train-Smith Co., G. A. 6603 (T. D. 28202)—and our attention has not been directed to any provision in the tariff act of 1913, showing a congressional intent to change this practice. Upon the authorities cited, therefore, we hold the merchandise covered by protest 796923 dutiable at 10 per cent ad valorem under paragraph 384, said protest claim being sustained.

(T. D. 36341—G. A. 7887.)

Pigs' liver paste—Prepared meat.

A commodity known as pigs' liver paste, being the ground liver of the pig put up in small hermetically sealed tins, is free of duty under the provision in paragraph 545, tariff act of 1913, for "meats of all kinds, prepared or preserved." The same commodity containing truffles is dutiable as an unenumerated manufactured

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article under paragraph 385 of the same act, in accordance with ruling in United States *v.* Furuya Co. (6 Ct. Cust. Appls., 207; T. D. 35463).

United States General Appraisers, New York, April 19, 1916.

In the matter of protest 789464 of Strohmeyer & Arpe Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed in part; overruled in part.]

Strauss & Hedges (*Jacob L. Klingaman* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The merchandise in the case before us is described as paste made of pigs' livers, with and without truffles, put up in small hermetically sealed tins. A sample of the goods was introduced in evidence. Upon inspection it appears to be a preparation of pigs' liver. The sample introduced did not contain truffles. An inspection of the sample in evidence would seem to show that the commodity is almost entirely made up of the liver of the pig. It has been assessed for duty as an unenumerated manufactured article under paragraph 385, tariff act of 1913. It is claimed to be free of duty under the provision for "meats of all kinds, prepared or preserved," in paragraph 545.

In United States *v.* Weber (6 Ct. Cust. Appls., 234; T. D. 35469), the merchandise was pâté de foie gras, a preparation of goose livers, being the cooked liver immersed in fat, and it was held that this commodity should be classified as "poultry prepared in any manner," reversing the finding of the board that it was prepared meat. "Poultry, prepared," it will be observed, however, is specifically provided for in the tariff act.

Coming to the case at bar, prepared meat of the pig is not distinguished or separated by the statute from other prepared meats. Paragraph 545 provides, first, for fresh beef, veal, mutton, lamb, and pork; then for bacon and hams; and, lastly, for "meats of all kinds, prepared or preserved, not specially provided for in this section." If the prepared flesh of the pig were specifically provided for in the tariff, it would be consistent to hold, under the rule laid down in United States *v.* Weber, *supra*, that the merchandise before us would be dutiable as such. In the absence, however, of any such provision we are of the opinion that this commodity without truffles is more specifically provided for under paragraph 545 as prepared or preserved meat than under paragraph 385 as an unenumerated article.

With reference to the tins containing truffles, we are unable to find that the quantity of truffles is so small as to be disregarded. Witness had not seen the commodity prepared, and it is evident

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that his estimate as to quantity of truffles is a guess. We do not know how the truffles are mixed with the liver. If they were ground with the meat, one could not estimate the proportion with any accuracy. The importers should have enlightened us upon this point. They not having done so, we think the case as to the tins containing truffles is governed by United States *v.* Furuya Co. (6 Ct. Cust. Appls., 207; T. D. 35463).

We therefore sustain the protest as to tins in which there are no truffles, overruling it in all other respects.

(T. D. 36342—G. A. 7888.)

Bagging patches.

BAGGING PATCHES—WEIGHT—NONINFLAMMABILITY.

In order that jute bagging patches for cotton may be admitted to free entry under the first provision of paragraph 408, tariff act of 1913, it must be proved that they weigh not less than 15 ounces per square yard, and in order to bring them within the purview of the second provision of the paragraph, it must be shown that they have not been "rendered noninflammable by any process."

United States General Appraisers, New York, April 19, 1916.

In the matter of protest 789132-6364 of the Texas & Pacific Railway Co. against the assessment of duty by the collector of customs at the port of New Orleans.

[Affirmed.]

Oberle & Henry (*William Henry* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*John R. Rafter*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The goods in question are invoiced as "jute bagging, patches for cotton," or "jute cotton bagging," which, we understand, means the same thing; that is, it is a jute fabric intended for patches for cotton bales where the bales have been torn or opened for the purpose of sampling. These goods were assessed under paragraph 284, tariff act of 1913, which reads as follows:

284. All woven articles, finished or unfinished, and all manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or any of them, is the component material of chief value, not specially provided for in this section, thirty-five per centum ad valorem.

They are claimed to be free of duty under paragraph 408, which is in the following language:

408. Bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, jute butts, seg, Russian seg, New Zealand tow, Norwegian tow, aloe, mill waste, cotton tares, or other material not bleached, dyed, colored, stained, painted, or printed, not exceeding sixteen threads to the square inch, counting the warp and filling, and weighing not less than fifteen ounces per square

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yard; plain woven fabrics of single jute yarns by whatever name known, not bleached, dyed, colored, stained, printed, or rendered noninflammable by any process; and waste of any of the above articles suitable for the manufacture of paper.

We gather from the reports of the collector and the appraiser that these goods were classified under paragraph 284 because they have been stenciled. This stenciling consists of the word "Paton," or some other word, in letters about 5 inches high. The testimony shows it was for identification merely. The reason doubtless for assessment under paragraph 284 was because of the claim that the stenciling constituted a staining, painting, or printing, which would exclude the goods from classification under paragraph 408. We do not think the stenciling upon these goods, as it appears from an examination of the samples in evidence, would be sufficient to cause their exclusion from paragraph 408. Note the case of Wolff & Co., G. A. 7098 (T. D. 30930), and Mente & Co.'s case, G. A. 7705 (T. D. 35268).

The testimony introduced on the part of the importers shows that these goods were intended for patching cotton bales. No evidence was introduced with reference to the number of threads or the weight of the fabric per square yard, as provided for in paragraph 408. We think it is evident from an inspection of the goods that there are less than 16 threads to the square inch, counting the warp and filling, and that it is a plain woven fabric of a single yarn. We do not think, however, we are authorized to assume that the weight of the fabric is as required by the statute. There was no evidence, as stated above, upon this point. We must therefore conclude that the importers have not made out their claim under this part of the paragraph, as clearly it is essential to know the weight in determining classification under the first part of paragraph 408.

It remains to consider whether the goods can be classified under the second part of paragraph 408, providing for "plain woven fabrics of single jute yarns by whatever name known, not bleached, dyed, colored, stained, printed, or rendered noninflammable by any process."

There appears to be no evidence upon which we can find that they are jute fabrics except the reports of the collector and the appraiser. We might perhaps determine from an inspection that they are plain woven fabrics of single yarn, and it might be considered sufficiently proved that they are of jute because the collector has so returned them. At the same time it would be very unsatisfactory. There remains, however, the further question whether the goods have been rendered noninflammable. Upon this point there is not a scintilla of evidence, and we can not see how we would be authorized to conclude that they had not been rendered noninflammable. We are not furnished any rule by which we can detect the quality of noninflammability, and even if we knew how it should be done, we are of the opinion

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it was proof that should have been furnished by the importers in order to make out their case. We therefore conclude that the record does not warrant us in classifying the goods under the second provision of paragraph 408.

The importers, then, have failed to bring the merchandise within the claims made in the protest. Therefore, the collector's classification will stand.

The protest is overruled.

(T. D. 36343—G. A. 7889.)

Rice bead curtains, glass bead curtains, etc.

1. Paragraph 333, tariff act of 1913, covers curtains and other articles not embroidered nor appliquéd and not specially provided for, composed wholly or in chief value of beads, only when such curtains or articles are susceptible of being embroidered or appliquéd.

2. Curtains in chief value of rice paste beads, not susceptible of being embroidered or appliquéd, are dutiable by virtue of the similitude clause in paragraph 386 at 25 per cent ad valorem as curtains in chief value of bamboo, wood, straw, or compositions of wood.

3. Similar curtains in chief value of colored glass beads, not susceptible of being embroidered or appliquéd, are dutiable under paragraph 84 as articles in chief value of colored glass.

4. This merchandise is not dutiable under paragraph 333, by virtue of the similitude clause, for the reason that where merchandise is excluded from a paragraph the similitude clause can not be invoked to place the merchandise within the paragraph from which it has been excluded.

United States General Appraisers, New York, April 21, 1916.

In the matter of protests 746572, etc., of Morimura Bros. against the assessment of duty by the collector of customs at the port of New York.

[Reversed in part; affirmed in part.]

Masters & Levett (*Benjamin A. Levett* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Leland N. Wood* and *John J. Mulvaney*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* The subjects of these protests were assessed with duty at 50 per cent ad valorem under that part of paragraph 333 of the tariff act of 1913 which provides for—

Curtains and other articles not embroidered nor appliquéd and not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material * * *.

The articles in question are curtains composed in chief value of rice paste beads (items 348/18, 348/3, and 348/15), and similar curtains in chief value of glass or glass beads (items 347/4).

It is contended by the protestants that the rice paste curtains are dutiable under paragraph 175 by similitude to curtains in chief

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value of "bamboo, wood, straw, or compositions of wood" at 20 or 25 per cent ad valorem, or alternatively at 15 per cent ad valorem as an unenumerated manufactured article under paragraph 385. The latter claim is made in both protests.

As to the glass curtains it is contended they are dutiable under paragraph 95, as "manufactures of glass * * * or of which glass * * * is the component material of chief value," not especially provided for, at 30 per cent ad valorem. This claim is in both protests.

There is also a claim in protest 755667 that the merchandise is dutiable under paragraph 84 at 45 per cent ad valorem. This paragraph provides among other things for—

> All articles of every description composed wholly or in chief value of glass, * * * *colored*. (Italics ours.)

An examination of the glass curtains shows that they are almost entirely composed of *colored* glass.

There is a further claim in both protests under paragraph 368, but in protestants' brief this claim is expressly waived as to the rice curtains, as is the claim under paragraph 95.

In both protests there is the statement:

> The foregoing claims are made directly, or by virtue of paragraph 386.

The appraiser states in his reports that the rice paste curtains are composed in chief value of rice beads. There is no mention of the glass curtains in either report. Apart from the evidence, however, the fact that they were classified as in chief value of beads is sufficient to show they are such, that classification not being contradicted. An inspection of the samples also tends to confirm our judgment that beads are the component material of chief value, in the glass sample at least.

It is the contention of the protestants that the merchandise is not dutiable under the bead paragraph for the reason it is not susceptible of being embroidered or appliquéd. This fact is fully established by the testimony.

The samples consist of strips of colored wood from which are suspended strings of beads of colored glass or colored rice paste, alternating in the glass curtains with tubes of colored glass. In the rice curtains the upper part consists of strung pieces of bamboo, besides the rice paste beads in the lower part of the curtains.

The Government contends that we should read that portion of the bead paragraph under which these articles were assessed, as follows:

> Curtains * * * composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material.

While the protestants claim that the words omitted from the above, being "and other articles not embroidered nor appliquéd," should be

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considered; that the paragraph has reference entirely to merchandise that can be embroidered or appliquéd, and if it is not susceptible of being embroidered or appliquéd it is not within the provisions of this paragraph, but excluded therefrom for all purposes.

A casual reading of the bead paragraph, without analyzing it as the protestants have in their brief, would indicate the Government's position was meritorious, but the construction placed upon statutes similarly phrased sustains the holding that merchandise to be within the latter part of the bead paragraph must be such as can be embroidered or appliquéd.

This is the first time we have had this question before us, so far as the bead paragraph is concerned.

In Fensterer & Ruhe *v.* United States (1 Ct. Cust. Appls., 93; T. D. 31110) the question arose whether or not bisque rings, not susceptible of decoration and designed for incandescent burners, were dutiable under paragraph 96 of the tariff act of 1897, which provided for—

> 96. All other china, porcelain, parian, bisque, earthen, stone, and crockery ware, and manufactures thereof, or of which the same is the component material of chief value, by whatever name known, not specially provided for in this act, if painted, tinted, stained, enameled, printed, gilded, *or otherwise decorated or ornamented in any manner*, sixty per centum ad valorem; if not ornamented or decorated, fifty-five per centum ad valorem. [Italics are ours.]

Or under section 6 of the same act at 20 per cent ad valorem as nonenumerated manufactured articles. The board held that the merchandise, not being ornamented or decorated, was dutiable at 55 per cent ad valorem as provided in paragraph 96. The protestants contended that, as the merchandise was not susceptible of ornamentation or decoration, it could not be dutiable under that paragraph. The court reversed the board, holding the merchandise dutiable as claimed by the protestants under section 6. By analogy that is the identical question in the case at bar.

The court, in Fensterer & Ruhe, *supra*, referring to the contention of the importers and the relevancy of the question presented, stated:

> As we agree with the contention that the bisque rings are not susceptible of decoration according to usual commercial practice (United States *v.* Wing, 167 Fed. 317) the inquiry is resolved into this, How should bisque rings for incandescent burners, the rings not being susceptible of decoration, be classified?
>
> If the question were wholly new, we should not find it difficult to sustain the argument advanced by the learned counsel for the Government that section 96 is comprehensive enough to cover all articles of whatever character made of bisque or of which bisque is the component material of chief value, without regard to susceptibility to decoration.
>
> * * * * * * *
>
> But we find that there has been a trend of construction of the act of 1897 in the opposite direction, with which we feel constrained to put this court in accord, unless the cases can be distinguished upon some substantial basis.

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With this principle in view, and after a full and elaborate review of all the authorities, the court came to the conclusion that paragraph 96 had reference to merchandise decorated or ornamented or susceptible of ornamentation or decoration; that even though it was not decorated, the fact that it could not be took it out of paragraph 96.

That view is sustained in United States *v.* Downing (201 U. S., 354; T. D. 27281), wherein the court had before it for classification certain sticks of carbon used for electric lighting, held dutiable by the board under paragraph 98 of the tariff act of 1897 by virtue of the similitude clause of that act (section 7).

Paragraph 97 of that act provided:

97. Articles and wares composed wholly or in chief value of earthy or mineral substances, or carbon, not specially provided for in this act, if not decorated in any manner, thirty-five per centum ad valorem; if decorated, forty-five per centum ad valorem.

The similitude clause of that act provided:

SEC. 7. That each and every imported article not enumerated in this act which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this act as chargeable with duty shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; * * *.

In considering these paragraphs the court said:

However, we may put our decision on another ground, which will be best developed in considering the contention of respondents under paragraph 97.

The contention encounters a serious difficulty. As was decided in Dingelstedt *v.* United States (91 Fed., 112), the paragraph covers articles which are susceptible of decoration and not, as contended by respondent, articles decorated or not decorated, irrespective of their capability of being decorated. If the articles in question do not fall within paragraph 98, because not finished, and do not fall within paragraph 97, because not susceptible of decoration, where do they fall? They would seem necessarily to fall under that part of section 6 which provides that "on all articles manufactured, in whole or in part, not provided for," and subject to a duty of 20 per cent ad valorem. But there is a circumstance to be considered that arrests this effect.

The court then quoted section 7, *supra*, and said:

The imported merchandise is undoubtedly manufactured articles and do not miss by a great deal being identical with "carbons for electric lighting" in the most restricted sense of that description. They have, therefore, similarity in all the particulars mentioned in section 7 to such carbons.

These authorities sustain the contention that rice or glass bead curtains, neither embroidered nor appliquéd, nor susceptible of such ornamentation, are not within the provisions of paragraph 333. It must be admitted that the merchandise under consideration is not susceptible of being embroidered or appliquéd. We therefore find as a matter of law it is not dutiable under paragraph 333.

The question then arises, Under what paragraph should the merchandise be classified? In protest 746572 it is claimed dutiable under paragraph 175 by similitude to curtains in chief value of "bamboo,

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wood, straw, or compositions of wood" at 20 or 25 per cent ad valorem. In their brief protestants contend that this claim is applicable to the rice paste curtains. Protest 755667 has a claim that the merchandise is dutiable at 45 per cent ad valorem under paragraph 84, which, among other things, relates to articles in chief value of colored glass.

The rice paste curtains are composed in chief value of rice paste beads, and there are also pieces of bamboo and wood contained therein. Rice paste is of vegetable origin, and so are bamboo, wood, straw, or compositions of wood. Rice and straw, too, are of similar origin, as both may come from the same plant. Therefore the *material* of chief value in the rice curtains is similar to the material in curtains in chief value of bamboo, wood, straw, or compositions of wood provided for in paragraph 175.

In re protests 403725, etc., of Adolph Strauss & Co., G. A. 7047 (T. D. 30725), Judge Hay, speaking for the board, said:

> Wherever an imported article is not specifically made dutiable, it is the duty of the classifying officer, and of this board upon appeal to it, to ascertain whether or not it is similar either in material, quality, texture, or the use to which it may be applied to any other article that is enumerated in the tariff law, before classifying it as a nonenumerated manufactured or unmanufactured article.

The component material of chief value in these rice bead curtains being similar to that in the curtains covered by paragraph 175, they would seem to be dutiable under paragraph 175 by virtue of the similitude paragraph (386).

But if the rice curtains in question are dutiable under paragraph 175 because of *similarity* of material, for a stronger reason they are dutiable under that paragraph because of *identity* of use with the curtains covered thereby.

The similitude clause of paragraph 386 of the present act is as follows:

> 386. That each and every imported article, not enumerated in this section, which is similar, either in *material*, quality, texture, or the *use* to which it may be applied, to any article enumerated in this section as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; * * *. (Italics are ours.)

Even if we disregard the similarity of material between these rice curtains and those provided for in paragraph 175, common knowledge tells us that in use they are identical. Being identical in use, does not this merchandise come within paragraph 175 by virtue of the similitude clause? The authorities satisfy us that it does.

In Arthur *v.* Fox (108 U. S., 125) the Supreme Court held that a nonenumerated article, if found to bear a substantial similitude to an enumerated article, either in material, quality, texture, or use to which it may be applied, is made by section 2499, Revised Statutes, liable to the duty imposed upon the enumerated article. In his opinion Chief Justice Waite enters extensively into the question of similarity of use, material, quality, and texture. While in the cited case the

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material was more nearly similar to the enumerated article than the rice curtains in the case at bar, yet in use both were identical.

In Herrman *v.* Arthur (127 U. S., 363) the Supreme Court again passed upon the question of similitude, and, commenting on the Fox case, *supra*, held that the merchandise should have been classified by virtue of the similitude clause.

The merchandise in question, being exempted from the provisions of paragraph 333, can not be put back into that paragraph by reason of its similitude to the merchandise covered thereby.

The curtains in chief value of colored-glass beads are similar in material to the articles in chief value of colored glass provided for by paragraph 84.

We therefore find that the curtains in chief value of rice paste beads are dutiable at 25 per cent ad valorem under paragraph 175, and that the curtains in chief value of colored-glass beads are dutiable under paragraph 84 at 45 per cent ad valorem as articles in chief value of glass, colored.

As to the rice paste curtains we sustain protest 746572 as indicated, but overrule protest 755667 as to this merchandise for the reason that it makes no claim under paragraph 175.

Protest 755667, however, is sustained as indicated as to the glass curtains, but, inasmuch as there is no claim under paragraph 84 in protest 746572, as far as the glass curtains are concerned, protest 746572 is also overruled.

While the collector's decisions as to the rice curtains in protest 755667 and as to the glass curtains covered by protest 746572 are not acquiesced in, under the circumstances we can not disturb them. In other respects they are reversed.

(T. D. 36344—G. A. 7890.)

Coal-tar pitch containing a substantial amount of mineral matter.

In the absence of legally sufficient evidence showing commercial use, coal-tar pitch containing a substantial quantity (from 6 to 9 per cent) of calcium or other mineral, is not "pitch of coal tar" within the meaning of paragraph 452, act of 1913, but must be classified as a preparation of coal tar under paragraph 21 at 15 per cent.

United States General Appraisers, New York, April 21, 1916.

In the matter of protest 751774 of Balfour, Guthrie & Co. against the assessment of duty by the collector of customs at the port of Seattle.

[Affirmed.]

Loren Grinstead for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence* and *John R. Rafter*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* The substance here involved, invoiced as "pitch," was classified by the collector under paragraph 21, act of

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1913, at 15 per cent, providing for "all other products or preparations of coal tar, not colors or dyes." It is claimed to be free as "pitch of coal tar" under paragraph 452.

Samples of the substance were analyzed both by the Government chemist and by the city chemist of Seattle on behalf of the importers. The former found about 9.87 per cent of mineral matter. The latter also found 6 or 7 per cent of mineral matter, and stated his conclusion on page 17 of the record as follows:

> The sample was principally coal-tar pitch, with an addition of calcium in the form of ground limestone. This was added to render the material less brittle in cold weather and less subject to heat in the summer or hot weather. It was not necessary to mix lime or limestone in order to get this. Cement or ground stone of any kind will answer the same purpose.

An effort was made to show by this same witness, the city chemist, that while ordinarily coal-tar pitch would contain but a trace of mineral matter, less than 1 per cent, nevertheless, because the specifications for paving material in Seattle and other adjoining cities required about 6 per cent of mineral matter, it is still commercial coal-tar pitch. This witness was a chemist and had a very limited experience in sales. It was held by Judge Waite, sitting in circuit, that he was not sufficiently qualified to show commercial use. With that ruling we concur, and in the absence of any legally sufficient testimony in this record bearing on the commercial meaning, we must affirm the classification.

Thorpe's Dictionary of Applied Chemistry (page 288 and following) describes coal-tar pitch and gives the standard chemical composition as containing only 0.43 of 1 per cent of ash, and describes how, in its various uses, as fuel in the form of briquettes, to make certain varnishes and japans, to make asphalts and compounds for paving, various other things are added to it.

The substance here involved is coal-tar pitch and something more. It is not affirmatively shown to be commercially coal-tar pitch, and the protest is overruled.

(T. D. 36345—G. A. 7891.)

Babbitt metal.

> Material invoiced as "Babbitt metal," but which after melting was found to be unsuitable for use as such by reason of the presence of an excess quantity of zinc therein, is properly classifiable as "waste, not specially provided for," under paragraph 384 of the act of 1913, at the rate of 10 per cent ad valorem, as claimed by the importers, rather than dutiable at the rate of 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for, as classified by the collector.

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United States General Appraisers, New York, April 21, 1916.

In the matter of protest 779918 of Frank P. Dow Co. (Inc.) against the assessment of duty by the collector of customs at the port of Seattle.

[Reversed.]

Robert A. White for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Laurence*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question is invoiced as "6 brls. Babbitt metal." Duty was levied thereon at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as articles or wares composed of metal not specially provided for, and it is claimed to be properly entitled to free entry under either paragraph 518 of said act as "wrought iron and scrap and scrap steel," or under paragraph 520 of said act as "old junk," or if not free, then that it is properly dutiable at the rate of 10 per cent ad valorem under paragraph 384 of said act as "waste, not specially provided for."

Inasmuch, however, as Babbitt metal is a commodity which contains neither wrought iron nor steel, the claim alleged under paragraph 518 need not here be considered.

Moreover, paragraph 520 of the present act provides free entry for unmanufactured jet, while paragraph 522 similarly provides for old junk. But as "old junk" is specified in the protest, we are satisfied that the importers intended to enumerate therein "522" instead of "520" as the paragraph under which the claim is made. And as there exists no doubt in our minds on this point, and as the Government interposed no objection thereto, we hold that this erroneous enumeration constitutes merely a clerical error which in no sense affects the sufficiency of the claim alleged.

The only testimony in the case is that of Charles C. Finn, the secretary of the importing company. He testified that his company purchased a quantity of material which had been gathered in a certain shipyard in Victoria, British Columbia, as scrap metal fit only for remanufacture; that after sending the metal to the smelting plant operated by his company at San Francisco, where it was melted and cast into square chunks weighing from 30 to 40 pounds each, so-called "zinc fractures" were found therein which rendered it unsuitable for use in the manufacture of Babbitt metal, and that because of the presence of zinc together with antimony in the metal it would be a commercial impossibility to make Babbitt metal thereof, and for that reason the metal is useless for anything save as junk.

While the witness stated that in every trade the term "junk" covers the lowest waste of that particular trade, there is no testimony that the particular commodity here in question is definitely, uni-

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formly, and generally sold and dealt in or commercially known and recognized under that designation. The mere fact that this material is unfit for use as Babbitt metal is not sufficient to throw it into the class of articles, if such there exists, which would be definitely known in trade and commerce as "junk."

All that we are able to find from the record is that the merchandise as imported is not fit to be converted into Babbitt metal, and that in its imported state the article is a waste.

"Waste" is defined by Webster as "that which has no original value for the ordinary or main purpose of manufacture."

And, in Patton *v.* United States (159 U. S., 500), Mr. Justice Brown, speaking for the court on the common and ordinary understanding of the term "waste," said:

> The prominent characteristics running through all these definitions is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable and used for purposes for which merchantable material of the same class is unsuitable.

In Standard Varnish Works *v.* United States (59 Fed., 456), the Circuit Court of Appeals for the Second Circuit held that candle tar, a residuum or by-product for manufacturing candles, was a manufactured article and not waste. Judge Lacombe, writing the opinion in that case, said:

> The Century Dictionary defines "waste" as "broken, spoiled, useless, or superfluous material; stuff that is left over, or that is unfitted, or can not readily be utilized for the purpose for which it was intended; overplus; useless or rejected material." This definition exactly fits spoiled, superfluous, or rejected material which is of the same kind as the material utilized for the intended purpose.

In the case at bar, the merchandise is but a waste metal which is gathered in shipyards and which is suitable only for remanufacture after undergoing proper treatment.

In Abstract 25221 (T. D. 31478) this board held that certain worn-out bearings of old machinery, composed of Babbitt metal, which were fit only for remanufacture, were dutiable as waste, and we believe that ruling is properly applicable to the merchandise here in question. Inasmuch as the material in its imported condition is not in the form of articles, but is rather in the form of blocks and therefore raw material suitable only for remanufacture, it is not classifiable as a manufacture of metal, nor even as articles or wares composed of metal, within the purview of paragraph 167. Indeed, it is a question whether the merchandise as imported does not fall within the specific provision in paragraph 154 for "metallic mineral substances in a crude state, and metals unwrought, whether capable of being wrought or not, not specially provided for," and as such dutiable at the rate of 10 per cent ad valorem thereunder. That claim, however, is not made here.

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Moreover, we are satisfied that the provision in paragraph 384 for "waste, not specially provided for," sufficiently and aptly describes the importation, and we therefore sustain that claim in the protest.

The decision of the collector is modified accordingly.

(T. D. 36346—G. A. 7892.)

Entered value.

Before an importer is entitled to apply to the Secretary of the Treasury for relief under paragraph I of section 3, tariff act of 1913, he should, in addition to filing the certificate required thereunder, also file with the collector a notice of appeal to reappraisement, which appeal should be prosecuted by the importer to a successful issue. It is only in cases where the importer's contention is sustained by a final decision on reappraisement that the Secretary of the Treasury is authorized or empowered to direct that duty shall be assessed upon an amount less than the entered value.

United States General Appraisers, New York, April 21, 1916.

In the matter of protest 749933 of K. Kawashiri against the assessment of duty by the collector of customs at the port of Seattle.

[Affirmed.]

Geo. S. Bush & Co. (*J. B. Fenn* of counsel) for the importer.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* On making entry of an importation of Japanese type, the importer added to the original invoice value thereof a sum sufficient to meet an advance previously made by the appraiser on a prior shipment of similar merchandise. In making such addition, the importer attached to the invoice covering the present importation the following certificate, but he did not, however, file any notice of appeal to reappraisement:

Importer certifies that the entered value of the merchandise on this entry is higher than the foreign market value; and the goods are so entered in order to meet advances by the appraiser in similar case—reappraisement No 71490, now pending before Board of General Appraisers—and we claim duty shall be assessed on the original invoice value on liquidation of the entry under paragraph I of section 3, tariff act of October 3, 1913.

The provision in paragraph I thus invoked by the importer reads as follows:

The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, and the importer's contention shall subsequently be sustained by a final decision on reappraisement, and it shall appear that the action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, and the Secretary of the Treasury shall accompany his directions with a statement of his conclusions and his reasons therefor.

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The protest, which is addressed to the collector, alleges in part as follows:

You erred in liquidating said entry on the entered value, which is higher than the foreign market value. At the time of making written entry I certified that the entered value of the merchandise was higher than the foreign market value, and that the goods were so entered in order to meet advance by the appraiser on a similar case then pending before the Board of General Appraisers. The case referred to is reappraisement No. 71490 covering entry No. 48193 entered at this port. Said reappraisement was sustained by the Board of General Appraisers on December 22, 1913, and in view of such decision I claim under paragraph I of section 3, tariff act of October 3, 1913, that liquidation should be made on the basis of the invoice value of 419.75 yen without assessing duty on advance of 122.82 yen made by me at the time of entering the merchandise, as such advance was made to meet the appraiser's advance in reappraisement case referred to above.

Hence, the importer here contends that, inasmuch as a decision has since been rendered in reappraisement No. 71490—which appears to have been pending undecided on the date of the present importation—whereby certain of the invoice values on merchandise similar to that here involved were sustained while such values on other items also covered by the appeal were not sustained, he is nevertheless entitled, by virtue of the above quoted provisions of paragraph I and of his certificate filed thereunder, to have his present shipment of the same character of goods reappraised in accordance with and at the same market values found by the board in the said test case on reappraisement, without even going through the formality of filing with the collector a notice of appeal to reappraisement.

At the hearing, counsel for the importer stated that the collector liquidated the entry herein without giving the importer any notice of the advance made by the local appraiser in order that the former might avail himself of his statutory right to appeal therefrom for a reappraisement by the Board of General Appraisers. No reference, however, to this particular question is made either in the protest or in the testimony introduced on behalf of the importer, and it is therefore unnecessary for us to here pass upon the same.

Nor do we deem it important to the decision of this case to here discuss the question whether or not the word "sustained," as used in said paragraph I, was intended by Congress to be construed with the same effect as though it read "sustained in whole or in part." It is sufficient for the purposes of this case to hold that, before an importer is entitled to apply to the Secretary of the Treasury for relief under paragraph I, he should, in addition to filing the certificate required thereunder, also file with the collector a notice of appeal to reappraisement, which appeal should be prosecuted by the importer to a successful issue. The terms of the statute clearly provide that only in cases where the importer's contention is sustained by a final decision on reappraisement is the Secretary of the Treasury

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authorized or empowered to direct that duty shall be assessed upon an amount less than the entered value.

As was said by General Appraiser Waite in Abstract 38260, a case involving questions of fact and of law identical with those here involved—

We know of no law requiring the collector to liquidate on the basis of anything other than the final appraisement, as shown by the record in the case before him. In order that the importers might avail themselves of the provisions of Paragraph I, they should have taken an appeal to reappraisement (the local appraiser having sustained the entered value) and procured by reappraisement a final determination of the value of the goods; in other words, sustained their contention with reference to the market value. Then, having shown the goods to be identical, and the circumstances surrounding the importation touching their value the same, they could properly have requested the direction from the Secretary of the Treasury to the collector to liquidate at the appraised value, which would have corresponded to the invoice value had their contention been fully sustained. The importers not having taken these steps, we are unable to say that the collector exceeded his authority in liquidating the entry on the basis of the appraisement shown by the record.

The protest is therefore overruled and the decision of the collector affirmed.

(T. D. 36347—G. A. 7893.)

Legality of liquidation—Paragraph I of section 3, act of 1913, construed.

1. ACTION OF THE SECRETARY OF THE TREASURY FINAL.

The provisions of paragraph I of section 3, tariff act of 1913, relative to the assessment of duty on merchandise at a less value than the entered value imposes upon the Secretary a discretionary duty, and his action is final.

2. JURISDICTION OF THE BOARD OF UNITED STATES GENERAL APPRAISERS.

If the duty imposed upon the Secretary in paragraph I of section 3, tariff act of 1913, is to be held to be mandatory, the Board of United States General Appraisers has no jurisdiction in a case where the Secretary has failed or refused to take the action contemplated by the law, as the collector is without power to assess the merchandise at other than the entered value except upon the direction of the Secretary.

United States General Appraisers, New York, April 21, 1916.

In the matter of protest 777420 of Mills & Gibb against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Curie, Smith & Maxwell for the importers.

Bert Hanson, Assistant Attorney General, for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* This case is submitted upon stipulated facts as follows:

STIPULATION.

The following statement of facts in this case is agreed upon by and between the parties hereto:

(1) The merchandise consists of lace and net window curtains covered by entry 39843 of February 7, 1914, ex steamship *St. Paul*.

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(2) At the time of making the entry in question, the importers made an addition of 20 per cent to the invoice values of the merchandise, attaching to their invoice and entry a certificate in the following form:

NEW YORK, *February 6, 1914.*

In order to meet advances made by the appraiser upon lace curtains appearing on invoice of October 29, 1913, covered by entry No. 320221, November 14, 1913, in steamship *Vaderland*, on which an appeal for reappraisement is now pending, the importers make the following addition on entry:

Case M G 9194

	Invoiced francs.
32351, cotton lace curtains	157.50
48139, 48151, 48135, 48163, 48205, 48155, 042833, 032631	328.70
037293, 32519, 35833, 35835	762.95
042827	40.55
48197	10.10
37305, 47745, 37305	130.65
51545	25.00
47743	35.60
42437, 033111	164.35
Invoice	1,655.40
Add 20 per cent	331.08

We hereby certify that the entered value is higher than the foreign market value to the extent of the above-mentioned addition, viz, 331.08 francs.

(Signed) MILLS & GIBB.
WM. T. EVANS, *Treasurer.*

(3) The previous invoice mentioned in the foregoing certificate, to wit, invoice of October 29, 1913, covered by entry 320221, November 14, 1913, ex steamship *Vaderland*, was entered by the importers at the invoice values, to which an advance of 20 per cent was made by the appraiser to make market value. Thereupon on January 8, 1914, and within ten days after the appraisement of said merchandise, the importers filed a notice with the collector in writing claiming reappraisement of said merchandise and within two days from the date of filing said notice deposited with the collector a filing fee of $1, said notice being upon form known as "Customs Cat. No. 4300," prescribed by the Treasury Department, and reading as follows, to wit:

TREASURY DEPARTMENT.
Customs Cat. No. 4300.
Art. 894, Customs Regulations of 1908.
C. F. C., Jan. 14—15.
Importer's notice to collector, claiming reappraisement.

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT NO. 10,
Port of New York, January 8, 1914.

Invoice No. 1.
Entry No. 320221.

SIR: As we consider the appraisement made by the United States appraisers too high on items advanced imported by us in the *Vaderland* from Antwerp I have to request that the same may be reappraised by a general appraiser in accordance with law.

Respectfully,

MILLS & GIBB,
A. CRAIG, Jr.,
284 Fourth Avenue, New York City.
(Importers' address.)

To Hon. DUDLEY FIELD MALONE,
Collector of Customs.

Thereupon the collector transmitted said invoice and all the papers appertaining thereto to the Board of United States General Appraisers, and said appeal having been designated reappraisement No. 72582 and having been assigned to General

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Appraiser I. F. Fischer for desision, and having been duly heard by him thereafter on February 11, 1914, said general appraiser rendered his decision and reported the same to the collector, as follows:

REPORT TO COLLECTOR.

No. 72582.

BOARD OF UNITED STATES GENERAL APPRAISERS,
New York, February 11, 1914.

Invoice No. ——.
Entry No. 320221/1.

To the COLLECTOR OF CUSTOMS, *New York.*

SIR: I have examined the following-described merchandise imported by Mills & Gibb in the *Vaderland* from Paris, October 29, 1913, and do hereby certify that, in my opinion, the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States was, and I do hereby appraise the same, as follows:

Marks.	Numbers.	Description of merchandise.	Per pair.	Total value.
			Francs.	
.....	.....	Lace or tamboured curtains.....	.....	.....

On all items appealed on by the importers add 5 per cent to entered value.

I. F. FISCHER, *General Appraiser.*

No appeal was taken by either party from said decision of the single general appraiser, and the said entry 320221 of November 14, 1913, ex steamship *Vaderland* was liquidated by the collector upon the said reappraised values.

(4) The merchandise covered by said entry 39843 of February 7, 1914, ex steamship *St. Paul*, subject of the protest herein, having been appraised by the appraiser, as entered, 20 per cent above the invoice values, the importers, on March 9, 1914, and within 10 days after said appraisement, filed with the collector a notice in writing claiming reappraisement and within two days from the date of filing said notice deposited with the collector a filing fee of $1, said notice being upon form known as "Customs Catalogue No. 4300," prescribed by the Treasury Department, and reading as follows, to wit:

TREASURY DEPARTMENT.
Customs Cat. No. 4300.
Art. 894, Customs Regulations of 1908.
Ed. Sept. 12–11–10,000.
Forms Committee Sept. 26–11.
Importer's Notice to Collector, Claiming Reappraisement.
Invoice No. 3.
Entry No. 39843.
600.

UNITED STATES CUSTOMS SERVICE,
Port of New York, March 9, 1914.

SIR: As we consider the appraisement made by the United States appraisers too high on merchandise entered or appraised higher than the foreign market value under paragraph I, section 3, act October 3, 1913, imported by us in the *St. Paul* from Liverpool, we have to request that the same may be reappraised by the general appraiser in accordance with law.

Respectfully,

MILLS & GIBB,
A. CRAIG, Jr.,
Fourth Avenue and Twenty-second Street, New York City.
(Importers' address.)

To Hon. DUDLEY FIELD MALONE,
Collector of Customs.

Thereupon the collector transmitted the invoice covered by said entry and all the papers appertaining thereto to the Board of United States General Appraisers, and said appeal having been designated reappraisement No. 73315, and having been

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assigned to General Appraiser I. F. Fischer for determination, and hearing having been duly had thereon, the said general appraiser rendered his decision upon said appeal on March 18, 1914, and reported the same to the collector, as follows:

REPORT TO COLLECTOR.

TREASURY DEPARTMENT. No. 73315
Customs Catalogue 6828.
Invoice No. —. BOARD OF UNITED STATES GENERAL APPRAISERS,
Entry No. 39843/3. "*New York, March 18, 1914.*

To the COLLECTOR OF CUSTOMS, *New York.*

SIR: I have examined the following-described merchandise imported by Mills & Gibb in the *St. Paul* from Paris January 26, 1914, and do hereby certify that in my opinion the actual market or wholesale price of said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States was, and I hereby appraise the same, as follows:

Marks.	Numbers.	Description of merchandise.	Per pair.	Total value.
			Francs.	
M G S pt. 9194	.....	Lace or tamboured curtains, etc.....	.....	.....
		(Schedule as per reap. record.)		

Add 5 per cent to invoice value to make market value.

I. F. FISCHER, *General Appraiser.*

(5) The merchandise covered by entry 39843 of February 7, 1914, ex steamship *St. Paul*, covered by the protest herein and subject of reappraisement 73315, was of the same character as the merchandise covered by entry 320221 of November 14, 1913, ex steamship *Vaderland*, subject of reappraisement 72582, and reappraisement No. 73315 was submitted by both sides for decision in accordance with reappraisement No. 72582.

(6) On June 18, 1914, the importers made application to the Secretary of the Treasury for a liquidation of entry 39843, February 7, 1914, ex steamship *St. Paul* (subject of this protest), upon the basis of the values found upon reappraisement, said application reading as follows:

JUNE 18, 1914.

The honorable the SECRETARY OF THE TREASURY,
Washington, D. C.

DEAR SIR: We respectfully request that in the liquidation of the entries mentioned below duty may be assessed upon the values found upon reappraisement, which are less than the entered values. The entries in question are as follows:

Reappt. No.	Entry No.	Date of Entry.	Vessel.
73315...	39843.....	Feb. 7, 1914	St. Paul.
73667...	43051....	Feb. 11, 1914	Minneapolis.

In making these entries we added 20 per cent to the invoice values of the goods in order to meet advances made by the appraiser on entries:

320221, Nov. 14, 1913, ex steamship *Vaderland.*

329554, Nov. 24, 1913, ex steamship *Majestic.*

then pending on appeal for reappraisement and covered by reappraisements 72582 and 73072, respectively, the character of the merchandise covered by all four entries being identical. We certified, at the time of making the additions upon entry, that the entered value was higher than the foreign market value and that the goods were so entered to meet advances by the appraiser.

The merchandise in question consists of window curtains made up by mounting a lace frame of somewhat elaborate design upon plain net. The lace frame constitutes from 75 to 80 per cent of the value of the curtains, and the net and the cost of mounting are very slight factors in the cost of the finished article. The profit on the lace frame and the profit on the net were fully included in the invoice values. These values

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also included a further addition equivalent to 30 per cent of the cost of mounting and 3 per cent over all costs and profits already included. The appraiser made a flat addition of 20 per cent over and above all such elements of costs and profits. No attempt was made at the hearing of the case to justify the advance of 20 per cent. The general appraiser, after a thorough hearing and careful consideration of the evidence, decided upon an addition of 5 per cent to our entered values. While we believe that our invoice prices were fully justified, we have accepted this advance, as we prefer that there should be no controversy with the Government respecting the values of these goods. The Government also accepted the reduction from 20 per cent advance to 5 per cent advance and took no appeal to a board of three general appraisers.

The additions upon entries 39843 and 43051 were made in good faith, after due diligence and inquiry upon our part. We were thoroughly familiar with the facts connected with the manufacture of these curtains, and were also satisfied from the outset that the advance was excessive; nevertheless, we preferred to make the additions upon entry and avoid possible penalties.

The general appraiser having taken the same action on entries 39843 and 43051 as was taken upon 320221, viz, having added 5 per cent to our invoice values, we submit that the entries, the subject of this application, should be liquidated upon that basis rather than upon the entered values.

Very respectfully,

(Signed) MILLS & GIBB.

(7) The said application was denied by the Treasury Department under date of July 28, 1914, in a letter addressed to the collector of customs at New York, as follows:

TREASURY DEPARTMENT,
Washington, July 28, 1914.

To the COLLECTOR OF CUSTOMS,
New York, N. Y.

SIR: The department has to refer to your letter of the 6th instant, returning the application of Messrs. Mills & Gibb for the reduction of the entered value under the provisions of paragraph I of section 3 of the current tariff act, of certain lace window curtains covered by entries Nos. 39843 and 43051 of February, 1914, which were advanced in value by the importers to meet advances made by the appraiser on similar merchandise covered by former entries Nos. 320221 and 329554, then pending on appeal to reappraisement.

It appears that the appraiser added 20 per cent for market value on the former entries referred to, and that on appeal to reappraisement the general appraiser sustained an advance of only 5 per cent on the entered value, which was also the invoiced value.

It further appears that the appeal to reappraisement on the entries which are the subject of the application, and on which an advance of 20 per cent had been made by the importers, resulted in an addition of only 5 per cent to the invoiced values.

The importers stated at the time of making entry that the advances were made to meet former advances by the appraiser on similar merchandise, and that the entered values were higher than the market values to the extent of the advances made by them.

Inasmuch as the contention of the importers was not sustained as to market value, the department must deny their application for a reduction of entered values.

You will therefore liquidate entries Nos. 39843 and 43051 on the basis of the entered values.

The four entries in question and all papers pertaining thereto are returned under separate cover.

Respectfully,

(Signed) WM. P. MALBURN,
Assistant Secretary.

Papers under separate cover.
9358.

(8) Thereafter, on September 23, 1914, in response to another communication from the importers, the department addressed a further letter to the collector of customs at New York, reading as follows:

1034 101237 4040/128

TREASURY DEPARTMENT,
Washington, September 23, 1914.

To the COLLECTOR OF CUSTOMS,
New York, N. Y.

SIR: The department acknowledges the receipt of your letter of the 9th instant returning a letter from Thomas H. Watson, manager of the curtain department of

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Mills and Gibb, requesting a refund of part of the duties paid by the firm on certain curtains covered by entries Nos. 320221, 329554, 39843, and 43051.

It appears that the invoiced value of the merchandise covered by the first two entries was advanced in value 20 per cent by the appraisers and only a 5 per cent advance was sustained on reappraisement, and that the entries were therefore liquidated on the basis of the reappraised value.

They therefore can not be considered under the provisions of paragraph I of section 3 of the tariff act pertaining to a reduction of the entered values.

It further appears that the last two entries were advanced in value 20 per cent by the importers to meet advances by the appraiser in the two previous cases mentioned above, and that the importers claimed the entered values were higher than the foreign market values "to the extent of the additions." On reappraisement of the merchandise, values were returned only 5 per cent in advance of the invoiced values. The importers therefore request a refund of duties on the 15 per cent advance, which was not sustained.

Under date of July 28 last the department denied the application of the importers for a reduction of the entered values on the entries in question on the ground that the importers' contentions were not sustained.

In view of the fact that the importers claimed the entered values to be higher than the foreign market values "to the extent of the additions," they clearly contended that the invoiced values correctly represented the foreign market values; and inasmuch as their contentions were not sustained, the department had no other alternative than to deny their application, and is therefore without authority to grant any relief in the matter.

Respectfully,

(Signed) A. J. PETERS,
Assistant Secretary.

No inclosure.

(9) Pursuant to the instructions contained in said letters of the Treasury Department, dated July 28, 1914, and September 23, 1914, the collector, in the liquidation of said entry 39843 of February 7, 1914, ex steamship *St. Paul*, assessed duties upon the entered values of said merchandise rather than upon the reappraised values thereof, and so stated in his report transmitting the protest herein to the board, as follows:

MARCH 12, 1915.

Respectfully referred to the Board of United States General Appraisers for decision.

In the liquidation of the entry duty was assessed upon the entered value as required by paragraph I, section 3, act of 1913. No reduction was allowed in the entered value for the reason stated in department letters of July 28, 1914, and September 23, 1914 (101237), copies of which are herewith enclosed.

The protest was lodged and fee paid within statutory time.

DUDLEY FIELD MALONE, *Collector.*
BERT HANSON,
Assistant Attorney General, Attorney for the Government.
CURIE, SMITH & MAXWELL,
Attorneys for the Importers.

Dated April 3, 1916.

The following provision of paragraph I of section 3, tariff act of 1913, is the statute upon which the act of the collector and the contention of the importer rest:

* * * The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, and the importer's contention shall subsequently be sustained by a final decision on reappraisement, and it shall appear that the action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, and the Secretary of the Treasury shall accompany his directions with a statement of his conclusions and his reasons therefor.

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Three questions of law arise under this statute and the stipulated facts.

First, the general appraiser's finding not having sustained in its entirety the importer's contention, does the law apply? The importer complied with the law in that he certified at the time of entry that the entered value was higher than the foreign market value, and that the goods were so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, but was his contention in the reappraisement proceeding subsequently sustained by the final decision in reappraisement? Technically, it was not. The value at which the merchandise was invoiced was 1,655.40 francs. The value at which it was entered was 1,986.48 francs, and the general appraiser found the market value to be 5 per cent over the invoice value. Thus the importer's contention was not entirely sustained; that is, his contention that the invoice value was correct. The general appraiser found that neither the invoice nor the entered value was correct. The importer's contention was not therefore sustained, but only sustained in part. But in the view which we take of this case this question is not an important one.

The second question which arises, and which we must determine, is, Is the Secretary's duty under the provision of paragraph I of section 3, above quoted, mandatory, or does that section repose in him a discretionary duty? In other words, are his duties there quasi-judicial or are they purely administrative? Our answer to that, in Strohrer's Keystone Pickle Works case, G. A. 7764 (T. D. 35629), was in effect that the statute devolves upon the Secretary a quasi-judicial duty. In that case we said:

> This change in the law was intended to give the importer the opportunity of entering his merchandise at such a figure as would avoid an advance and the penalty resulting therefrom and at the same time afford him an opportunity of having a less value ascertained upon reappraisement, and his entry liquidated accordingly. The determining, however, of all the questions incident to this right thus given to the importer was committed by Congress to the Secretary of the Treasury, and under the express language of the law the merchandise can not be assessed for duty upon an amount less than the entered value, unless the Secretary of the Treasury so directs. The further provisions of the paragraph above quoted are simply statements of what considerations shall control the Secretary of the Treasury and what shall be his duty in the premises. Congress had ample power to commit this duty to the Secretary of the Treasury and to make his action final, as we think was done by the language above quoted.

If the statute provided for nothing except that the importer's contention should be sustained by a final decision in reappraisement, there might be some room to hold that it was mandatory, but it must appear, too, to the Secretary of the Treasury, that the act of the importer in making the entry was taken in good faith and after due diligence and inquiry on his part. These things the Secretary

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must determine, and it seems difficult to see how in determining them he can exercise other than a quasi-judicial power, and no statute that reposes in a public official a duty that is either judicial or quasi-judicial can be held to be mandatory.

The third question, in its final analysis, assuming but not deciding that the statute is mandatory, goes to the jurisdiction of this board. On that question, in a concurring opinion in John L. Vandiver's case, G. A. 7880 (T. D. 36280), the writer of this opinion says:

> Whether, therefore, the provisions of paragraph I of section 3 are mandatory or directory upon the Secretary of the Treasury, they do not change the powers or duties of the collector. The law still prohibits him from taking duty upon an amount less than the entered value, except upon a certain condition, to wit, the direction of the Secretary of the Treasury.

It is not questioned, and the law has existed for so many years that it must be assumed that it will not be questioned, that Congress had power to require the importer to pay duty upon the amount of the entered value of his merchandise, even in cases where the appraised value and the reappraised value were less than the entered value. The greater power always embraces the lesser; hence it follows that Congress had power to require the importer to pay duty upon the entered value of his merchandise unless the Secretary of the Treasury directed the collector to assess duty upon a less value.

While it is a well-recognized rule of construction that in searching for the meaning of legislation you may look to the purpose which it was sought to serve, it is not necessary here to go into the history of the legislation or the history of the times with reference to its subject matter, for it is apparent that Congress did not mean to give greater latitude to the collector or extend his powers, but rather to repose in the Secretary of the Treasury the power to determine whether, under the conditions laid down in the act, the entry should be liquidated at a sum less than the entered value. As was pointed out, the law once provided that duty should not be assessed upon an amount less than the invoice and entered value. This law bound the collector to assess duty upon the full amount of the invoice or entered value of the merchandise. Congress saw fit, in 1909, to modify the power of the collector, and did so by striking out of that provision of law the words "invoice value," thus prohibiting the collector from assessing duty upon an amount less than the entered value. It is apparent that in the law of 1913 it was not the purpose of Congress to extend the collector's powers; had it been it would have been very simple to have made a provision similar to the one under which this case arose, omitting therefrom all reference to the Secretary of the Treasury and authorizing the collector to assess duty upon a sum less than the entered value upon the conditions therein named. On the contrary, however, Congress saw fit to

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impose upon the Secretary of the Treasury the duty of determining the existence of the conditions named in this paragraph, which would permit the collection of duty upon a sum less than the entered value, and continued the prohibition against the collector except in cases where the Secretary of the Treasury directed him otherwise.

In the case of United States *v.* Beebe & Sons (122 Fed., 762) the statute under consideration fixed definitely the authority which the collector should follow as to the value of foreign money in estimating duties upon imported merchandise. The same statute, however, provided that the Secretary of the Treasury might order a reliquidation of an entry at a different value whenever satisfactory evidence should be produced to show that the value in United States currency of foreign money specified in the invoice was, at the date of certification, at least 10 per cent more or less than the value at which, by statute, the collector was required to estimate the duties. The collector's duty, therefore, was quite clear, but the Secretary was given the power to order a reliquidation upon certain conditions expressly provided for in the statute. Where that reliquidation was ordered by the Secretary and those conditions did not exist, the reliquidation was manifestly void, as the Secretary had exceeded his power, and, as the Secretary's order was carried into the act of the collector in reliquidating the entry, the tribunal, to wit, the Board of United States General Appraisers, which had power to review the act of the collector in the reliquidation of that entry, could go back through all the provisions of law and acts of public officials to the source from which the power emanated.

In that case the collector of customs at Boston acted under the direction of the Secretary of the Treasury in the reliquidation of an entry involving the value of foreign money. The court held that the reliquidation was the collector's and not the Secretary's, and in effect, that, in reviewing the action of the collector in reliquidating the entry the law and the circumstances under which the Secretary of the Treasury directed the reliquidation should be reviewed and considered; whereas in the case at bar, it is sought to compel the collector to act in a case where the statute in positive terms prohibits him from acting except upon the direction of the Secretary of the Treasury in a case where no such direction has been given by the Secretary. In other words, a decision in favor of the importers in this case would, we think, compel this tribunal to either require the collector to do something in direct and positive contravention of law, or that decision must reach back beyond the collector to the Secretary and compel the Secretary to perform what it is claimed is his statutory duty. The first would be manifestly wrong, and the latter, we think, is beyond the power and jurisdiction of this board.

The protest is overruled.

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(T. D. 36348—G. A. 7894.)

Short shipment.

1. SHORT SHIPMENT—COMPLIANCE WITH REGULATIONS.

The affidavit required by article 1063, Customs Regulations of 1908, was not filed within 30 days of entry, but was filed some time previous to the forwarding of the protest to the board by the collector and was attached thereto by him. This is a sufficient compliance with the regulations under the circumstances of this case.—Abe Stein Co.'s case, G. A. 6865 (T. D. 29543).

2. PAYMENT OF DUTY UPON MERCHANDISE NOT IMPORTED.

There is no principle of law more fundamental as a guide in the administration of customs than that the citizen is not required to pay duty, and the public official should not require him to pay duty, upon merchandise which he does not import. Upon this fundamental principle of law the importer had a right to rely; that is, he had a right to assume that the collector would assess duty only upon such merchandise as in this case the collector knew he had imported.

3. SHORT SHIPMENT OF MERCHANDISE—TWICE-PAID DUTIES.

The importer in this case imported into the United States on the steamship *Potsdam*, on the 29th day of May, 1912, what was stated on the invoice to be 168 casks of aniline colors upon which he has paid duty at the regular rate under the tariff act of 1909. It was discovered and reported by the discharging officer that there were 10 casks shown upon the invoice and entry that were not found in the shipment. Later the shipment was made good by 10 casks being shipped on the steamship *Nieuw Amsterdam*, arriving on the 3d of June, 1912. Upon these duty was also paid. *Held*, the citizen is not required to pay duty upon merchandise which he did not import and which the collector in this case knew were not imported, although included in the entry and liquidation.

4. SUFFICIENCY OF PROTEST—WAREHOUSE ENTRY.

The merchandise in this case was placed in warehouse in May of 1912, and from time to time casks were withdrawn. On February 25, 1914, upon the withdrawal of the last cask, the collector added to the duty accruing thereon duty upon 10 casks not received. This amount the importer paid and six days thereafter, to wit, March 3, 1914, filed his protest. The timeliness of the protest is questioned. *Held*, the law provides that a protest may be filed not only against the collector's action in ascertaining and fixing the rate of duty but also against the collector's action in fixing the amount of duty upon imported merchandise. The amount of duty chargeable upon this merchandise was not definitely fixed until the collector required the importer to pay duty upon the 10 casks not imported, to wit, February 25, 1914.

United States General Appraisers, New York, April 21, 1916.

In the matter of protest 778610 of Badische Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Importers not represented by counsel.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* The importers in this case imported into the United States on the steamship *Potsdam*, on the 29th day of May, 1912, what was stated on the invoice to be 168 casks of aniline colors,

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upon which he has paid duty at the regular rate under the tariff act of 1909. It was discovered and reported by the discharging officer that there were 10 casks shown upon the invoice and entry that were not found in the shipment. Later the shipment was made good by 10 casks being shipped on the steamship *Nieuw Amsterdam*, arriving on the 3d of June, 1912. Upon these 10 casks duty was also paid. It is therefore the settled fact of this case, claimed by the importers and conceded by the collector, that the importers paid duty upon 10 casks of aniline colors that they did not receive. The importers did not file within 30 days of entry the affidavit required by article 1063, Customs Regulations of 1908, and it was shown by the testimony that they did not receive the notice from the collector which the article provides for. The affidavit therein provided for was filed by the importers at a later date and was attached by the collector to the protest when the same was forwarded to the board. This, we think, is a sufficient compliance with the regulations under the circumstances of this case. See Abe Stein Co.'s case, G. A. 6865 (T. D. 29543).

There is also some contention that the importer has waived his right to make a claim of shortage in this case, but the testimony shows that the waiver upon which this contention rests was signed by a boy 17 or 18 years old, in the employ of the brokers, who, acting for the importers, made the entry. We think the testimony also shows that neither the brokers nor the employee had authority to make such a waiver, hence there was no waiver on the part of the importers.

The collector in his memorandum forwarding the protest to the board says that the protest was filed more than 15 days after the date of liquidation. Attention was called to this by the Assistant Attorney General at the time of the hearing, but apparently he gave no special weight to the contention. The merchandise at the time of entry was placed in warehouse and from time to time casks were withdrawn, the following table showing the date of withdrawal, the same being approximately the date of payment of duty on the merchandise withdrawn:

ENTRY 145629.

Date of withdrawal.	Marks and numbers.	Kind of withdrawal.
June 12, 1912	BASF 147680/85, 6 barrels; 147766/75, 10 kegs	Consumption.
June 21, 1912	BASF 129586/95, 10 cases	Do.
July 3, 1912	BASF 55669/80, 12 barrels	Do.
July 11, 1912	BASF 129596/605, 10 cases	Do.
July 15, 1912	BASF 147728/31, 147833/35, 7 barrels	Do.
July 23, 1912	BASF 147737/46, 10 barrels	Do.
July 29, 1912	BASF 147611/20, 10 kegs	Do.
Aug. 7, 1912	BASF 147636/45, 10 kegs	Do.
Aug. 10, 1912	BASF 55693/704, 55907/26, 32 barrels	Do.
Aug. 26, 1912	BASF 147656/59, 4 barrels	Do.
Sept. 7, 1912	BASF 147792/96, 5 barrels	Do.
Oct. 1, 1912	BASF 147621/30, 10 kegs	Do.
Oct. 4, 1912	BASF 55649/68, 20 kegs	Do.
Feb. 25, 1914	BASF 147833, 1 barrel	Do.
June 3, 1912	BASF 147932, 1 barrel	Export.

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ENTRY 151241.

Date of withdrawal.	Marks and numbers.	Kind of withdrawal.
Aug. 2, 1912	BASF 148033/37, 5 barrels	Consumption.
Aug. 21, 1912	BASF 148054/60, 7 barrels	Do.
Aug. 31, 1912	BASF 147998/148000, 3 barrels	Do.
Sept. 28, 1912	BASF 55681/92, 12 barrels	Do.
Oct. 4, 1912	BASF 55982/91, 10 barrels	Do.
Nov. 12, 1912	BASF 147946, 1 barrel; 147974/76, 3 barrels	Do.

From this it will be seen that both the goods shipped on the *Potsdam* and the 10 casks to supply the shortage in that entry that were shipped on the *Nieuw Amsterdam* were all withdrawn in 1912 except 1 cask. Up to that time the importer had not paid duty on any merchandise he had not received, nor could he have known from an examination of any papers in the collector's office that he would be required to pay duty on merchandise not received by him. It is true that the entry had been marked "liquidated September 21, 1912" at the collector's office showing the total amount of the duty on the entire importation including the 10 casks, but no duty had been paid or exacted except upon the casks withdrawn from warehouse, and the importer had a right to rely upon the most fundamental of all principles in the administration of customs law, that he would not be required to pay duty upon merchandise he did not import. On the 25th of February, 1914, the last barrel or cask of the dye in question was withdrawn from warehouse and in addition to the duty due the Government from the importer on that barrel, the collector added and required him to pay duty on the 10 barrels not received. The question thus presented is unique. It was perfectly clear to the collector that he was requiring the importer to pay duty on merchandise not imported by him. On the 25th day of February he paid this duty, and on the 3d day of March, 1914, he filed his protest against it. It is quite apparent that he acted promptly and with due diligence. If he is, therefore, not to have the remedy which the law gives to every citizen under similar circumstances, it will be denied him upon an extremely narrow technicality. The law as it existed prior to 1913 required that a protest should be filed within 15 days, and after 1913, that it should be "filed within 30 days after but not before such ascertainment and liquidation of duties as well in cases of merchandise entered in bond as for consumption." The collector's stamp does not conclusively fix the date of liquidation.

There is no principle of law more fundamental as a guide in the administration of customs than that the citizen is not required to pay duty, and the public official should not require him to pay duty, upon merchandise which he does not import. Upon this fundamental principle of law the importer had a right to rely; that is, he

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had a right to assume that the collector would assess duty only upon such merchandise as in this case the collector knew he had imported. Hence, the importer could not have known that the collector would assess duty upon the 10 casks not imported until the 25th of February, when the collector added the duty upon these and required him to pay it. If, therefore, he is to be barred in this case from recovering back the duty thus unlawfully collected, it will be because he did not file a protest against the collector's unlawful act before he knew of it. His protest, however, was promptly filed as soon as the duty was exacted upon the 10 casks not imported. The law provides that a protest may be filed not only against the collector's action in ascertaining and fixing the rate of duty, but also against the collector's action in ascertaining and fixing the amount of duty upon imported merchandise. The amount of duty chargeable upon this merchandise was not definitely fixed until the collector required him to pay duty upon the 10 casks not imported. It is true the collector had ascertained the amount of duty upon the merchandise listed upon the invoice, but it is equally true that the invoice had erroneously listed thereon the 10 casks not imported, and, under the principle of law heretofore stated, the importer had the right to assume that, in finally fixing the amount of duty, he would not be required to pay duty upon the 10 casks which he did not import. It has been held and is well settled, we think, that "the duty provided by the tariff act in force at the time duty was paid and permit of delivery issued is the duty applicable to imported merchandise." F. L. Roberts & Co.'s case, G. A. 6994 (T. D. 30443). If the rate of duty, therefore, upon this merchandise had changed during the two years that some part of it, at least, was in bonded warehouse, and the collector had insisted on collecting duty at the old rate at which it was liquidated, and upon the liquidation of which he fixed the date as September 21, 1912, this principle of law would have been violated and the importer would have been without remedy unless he were allowed to file his protest within the statutory time after the merchandise was withdrawn. In Henry & Co.'s case, G. A. 4865 (T. D. 22805), it was held that the failure or refusal of the collector to make a reliquidation or adjustment before official withdrawal from bond was tantamount to a decision by him that the original liquidation was correct. In that case it was said by the learned general appraiser who wrote the opinion:

We might well suppose a case where goods were entered in bond, and duty was assessed upon the invoice weight, before the goods were withdrawn. A subsequent weighing of the goods might show a less weight than that shown by the invoice. But if, when the importers apply to the collector to withdraw their goods from bond, and he should refuse to adopt the newly ascertained weight, preferring to adhere to the liquidation made on the basis of the invoice weight, a protest would clearly lie against his determination thus to adhere to the liquidation already made, and such protest

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should evidently be filed within ten days after the refusal of the collector to make the necessary adjustment of duties. If this were not so, the importers would seem to have no remedy in cases of this kind.

In the case at bar, to use the language of Judge Somerville in the above quoted opinion, "the importer could not know that he (the collector) would adhere to and affirm his original liquidation until the pivotal time, the date of withdrawal." Applying the principle of that case to the case at bar, the failure of the collector to reliquidate the entry and assess duty only upon the merchandise actually imported (at the time of withdrawal and payment of duty), was tantamount to a decision that the original liquidation was correct and that duty should be assessed upon the merchandise not imported. In this view the protest was timely. It is therefore sustained, and the collector will reliquidate the entry, assessing duty only upon such merchandise as was found by the proper customs officers to have been imported.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, APRIL 17, 1916.

No. 39561.—Protests 751785, etc., of J. T. Steeb & Co. et al (Seattle and Galveston).

SEA-GRASS FURNITURE.—Merchandise classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable as furniture of wood at 15 per cent under paragraph 176.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39130 the furniture in question was held dutiable under paragraph 176, as claimed.

No. 39562.—Protest 786278 of David T. McKelvey (New York).

AXMINSTER CARPETING.—Merchandise invoiced as Chippendale Axminster carpeting, classified as Axminster rugs at 50 per cent ad valorem under paragraph 300, tariff act of 1913, is claimed dutiable as Axminster carpeting at 35 per cent under paragraph 293.

Opinion by BROWN, G. A. On the authority of G. A. 7868 (T. D. 36216) the merchandise in question was found to be Axminster carpeting and held dutiable under paragraph 293.

No. 39563.—Protest 782261 of Wm. Anderson & Co. (New York).

FLANNELS.—Certain merchandise classified under paragraph 290, tariff act of 1913, is claimed dutiable as flannels under paragraph 289.

Opinion by BROWN, G. A. The commodity in question was held dutiable as flannels under paragraph 289, as claimed. Abstract 39393 followed.

No. 39564.—Protests 791563, etc., of N. Pavazula Bros. et al. (New York).

FISH ROE.—Fish eggs slightly salted, imported in barrels, invoiced as "red caviar" and as "fish roe," classified under paragraph 216, tariff act of 1913, are claimed free of duty as eggs of fish under paragraph 478.

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Opinion by BROWN, G. A. On the authority of Moscahlades *v.* United States (6 Ct. Cust. Appls., 399; T. D. 35973), the fish roe in question was found not preserved within the meaning of paragraph 216. It was held free of duty under paragraph 478, as claimed.

No. 39565.—Protests 760308–54536, etc., of C. L. Benson et al. (Chicago).

BONED FISH IN TINS.—Merchandise classified as fish in tins at 15 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable as fish, skinned or boned, at three-fourths of 1 cent per pound under the same paragraph.

Opinion by BROWN, G. A. On the authority of Tokstad *v.* United States (6 Ct. Cust. Appls., 441; T. D. 35981), affirming G. A. 7720 (T. D. 35365), it was held that the provision for fish in tins controls over that for fish, skinned or boned. Protests overruled.

BEFORE BOARD 3, APRIL 17, 1916.

No. 39566.—Protests 790225, etc., of C. H. Wyman & Co. (St. Louis).

RICE WINE—PERCENTAGE OF ALCOHOL.—Goods invoiced as Chinese spirits, classified as spirituous beverages under paragraph 240, tariff act of 1913, are claimed dutiable under paragraph 244 as rice wine containing 24 per cent or less of alcohol.

Opinion by WAITE, G. A. The merchandise was found to be rice wine in bottles and that it contains 24 per cent or less of alcohol. It was held dutiable under the applicable provision of paragraph 244.

No. 39567.—Protest 791656–6288 of D. H. Holmes Co. (New Orleans).

PAINTING.—An oil painting classified as a work of art under paragraph 376, tariff act of 1913, is claimed entitled to free admission under paragraph 652.

Opinion by WAITE, G. A. The evidence was found not to sustain the claim that the painting is an original one or either a first or second reproduction or replica of the same. Protest overruled.

No. 39568.—Protest 789766 of M. Seller & Co. (Portland, Oreg.).

FREIGHT CHARGES—MARKET VALUE.—This protest is against the appraisement of a shipment of cups and saucers from Japan on which freight charges were added to the valuation.

Opinion by WAITE, G. A. In reappraisement proceedings the general appraiser affirmed the appraised value, and the reappraised value was affirmed by a board of three. It was held that the question of value is not open. Protest overruled.

No. 39569.—Protest 787588 of Amerman & Patterson (New York).

BEANS IN TINS—PROTEST UNSUPPORTED.—This protest is against the classification of beans in tins at 1 cent per pound under paragraph 199, tariff act of 1913. The protest jacket is marked "Submitted on record in test case."

Opinion by WAITE, G. A. It was held that the board can not take notice of what is intended to be designated as the test case. Protest overruled as unsupported.

No. 39570.—Protests 792744, etc., of George Borgfeldt & Co. (New York).

HAPPIFATS—KEWPIES—DOLLS.—So-called "Happifats" and "Kewpie" dolls classified as articles of bisque under paragraph 80, tariff act of 1913, are claimed dutiable as dolls under paragraph 342.

Opinion by HAY, G. A. On the authority of Abstract 38185 the happifats and kewpies in question were held dutiable as dolls under paragraph 342.

No. 39571.—Protests 773113–54561, etc., of Chas. D. Stone & Co. (Chicago).

MOTION-PICTURE FILMS—AMERICAN GOODS RETURNED.—Certain moving-picture films are claimed free of duty under paragraph 404, tariff act of 1913, as American goods returned.

Opinion by HAY, G. A. Protests overruled, the Treasury regulations not having been complied with.

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No. 39572.—Protest 758905 of A. H. Ringk & Co. (New York).

MOLYBDENITE—MINERAL SUBSTANCE.—Molybdenite classified under paragraph 81, tariff act of 1913, is claimed free of duty under paragraph 549.

Opinion by HAY, G. A. On the authority of Hampton *v.* United States (6 Ct. Cust. Appls., 392; T. D. 35926) the molybdenite in question was held entitled to free entry as crude mineral under paragraph 549.

BEFORE BOARD 1, APRIL 19, 1916.

No. 39573.—Protests 739970, etc., of Morimura Brothers (Seattle and New York).

STUFFED CHICKS AND DUCKLINGS—TOYS.

MCCLELLAND, *General Appraiser:* The special report of the appraiser on one of the protests covered by this decision states—

The merchandise consists of the skins of ducklings and chicks which have been dried and stuffed with cotton, with beads inserted for eyes, and otherwise manipulated, giving it the natural shape and form of a duckling or chick. They are used as ornaments on candy boxes and as Easter decorations, and to a certain extent as toys. Down dressed on the skins is the component material of chief value. Return for duty was made as down on the skin, dressed, not suitable for use as millinery ornaments.

Duty was assessed thereon at the rate of 40 per cent ad valorem under paragraph 347 of the tariff act of 1913. Protestants claim that free entry should have been allowed under paragraph 416 as "Birds, and land and water fowls," and alternatively claims are made for duty at 20 per cent under paragraph 347 as feathers and downs, crude; 35 per cent under paragraph 342 as toys; 15 per cent under paragraph 385; 30 per cent ad valorem under paragraph 266 as manufactures of cotton, of said tariff act.

In stating the issue here involved for the record at the trial of these cases counsel for protestants remarked that he relied upon the claim in paragraph 342 providing for toys but would "probably press the other issues when I get it before the court."

The testimony of the importers' witnesses is directed toward establishing that the merchandise is commercially bought and sold and known in the trade as toys. While it does appear from their statements that the merchandise is dealt in by so-called toy houses and that the articles are used in individual instances as toys, especially on Easter morning, yet the witnesses testifying on behalf of the Government were emphatic in saying that these articles were used by adults for other purposes than as toys, such as Easter decorations, ornaments for candy boxes, baskets, place cards, decorative purposes, and that their uses were not confined to children. It can not be said that the testimony as a whole affirmatively proves the importers' contention nor does it bring the merchandise within the definition of a "toy" as that term is defined by the Court of Customs Appeals in Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115), from which we quote the following:

A toy is essentially a plaything, something which is intended and designed for the amusement of children only, and which by its very nature and character is reasonably fitted for no other purpose. Although an article may be chiefly used for the amusement of children, if its nature and character are such that it is also reasonably fitted for the amusement of adults, or if it is reasonably capable of use for some practical purpose other than the amusement of children, it can not be classed as a toy unless it is affirmatively shown by the importer that it is so known and designated by the trade generally.

A reference to decisions on similar merchandise by the board and the courts under the tariff act of 1897 and the existing law discloses that the question raised by these protests is not a new one.

In G. A. 5655 (T. D. 25234) it was held that such articles were dutiable at the rate of 35 per cent under paragraph 418 as toys. There the claims of protestants were for free entry under paragraphs 493 and 494 as "Birds, stuffed, not suitable for millinery orna-

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ments," and "Birds and land and water fowls." The United States Circuit Court for the Southern District of New York, on appeal in Morimura *v.* United States (141 Fed., 383; T. D. 25872), reversed the decision of the board sustaining the claim under paragraph 493 for free entry.

In G. A. 7653 (T. D. 35016) these same articles were held to be subject to duty at the rate of 40 per cent ad valorem under paragraph 347 of the tariff act of 1913, the claims of the importers in that case being the same as those made in the protests now under consideration. G. A. 7653, supra, was affirmed in Morimura *v.* United States (T. D. 35437).

The record in protest 732130, covered by G. A. 7653, supra, is incorporated and made a part of the evidence in the cases here involved and on such combined record we affirm the action of the collector in each case.

The protests are overruled.

No. 39574.—Protest 796818 of S. L. Jones & Co. (San Francisco).

RATTAN REEDS.—Merchandise returned by the appraiser as manufactured chair cane, classified at 10 per cent ad valorem under paragraph 173, tariff act of 1913, is claimed free of duty under paragraph 648.

Opinion by McCLELLAND, G. A. On the record presented the protest was overruled.

No. 39575.—Protests 792522, etc., of C. S. Emery & Co. (St. Albans).

WHETSTONE BLOCKS—MINERALS, CRUDE.—Merchandise invoiced as blocks of whetstone, classified at 3 cents per cubic foot under paragraph 99, tariff act of 1913, is claimed free of duty under paragraph 507, 549, or 614.

Opinion by McCLELLAND, G. A. The blocks in question were held free of duty as crude minerals under paragraph 549.

No. 39576.—Protests 779257, etc., of F. B. Vandegrift & Co. (Philadelphia).

OILS FOR DRESSING LEATHER.—Merchandise invoiced as leather dressing oils, classified as distilled oils at 20 per cent ad valorem under paragraph 46, tariff act of 1913, is claimed free of duty as oils for stuffing or dressing leather under paragraph 498.

Opinion by McCLELLAND, G. A. It was found that these oils are sold only to manufacturers of leather who use it as a dressing oil for their product. They were held entitled to free entry under paragraph 498. G. A. 7870 (T. D. 36218) followed.

No. 39577.—Protests 768077, etc., of V. C. Squire (Detroit).

CATGUT.—Merchandise classified as manufactures of catgut at 20 per cent ad valorem under paragraph 366, tariff act of 1913, is claimed free of duty as catgut not manufactured, under paragraph 443.

Opinion by McCLELLAND, G. A. It was found that the catgut in question must be subjected to processes of stretching and wiring before it is capable of use as strings for musical instruments. It was held free of duty under paragraph 443. Abstract 38791 followed.

No. 39578.—Protests 765126–55070, etc., of G. W. Sheldon & Co. (Chicago).

BEADED ARTICLES—IMITATION JET ARTICLES—NECKCHAIN CLASPS—JEWELRY.—Necklaces, necklets, and neckchains composed of glass and amber beads, and earrings of metal set with imitation precious stones are claimed dutiable as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913. Crosses, necklets, and hearts of imitation jet are claimed dutiable as manufactures of glass or paste at 30 per cent under paragraph 95, or as manufactures of metal at 20 per cent under paragraph 167. They were all classified at 60 per cent under paragraph 356. Neckchain clasps classified at 50 or 60 per cent under paragraph 356 are claimed dutiable at 15 per cent under paragraph 151.

Opinion by SULLIVAN, G. A. The neckchain clasps were found to be composed of plain brass or of brass or white metal set with imitation precious stones. They were held dutiable at 50 per cent under paragraph 356. Mamluck *v.* United States

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(6 Ct. Cust. Appls., 556; T. D. 36198) followed. The necklaces, necklets, and neck-chains found to be composed in chief value of beads were held properly classified at 60 per cent under paragraph 356. Necklets of imitation jet were found to be jewelry and held properly classified. American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259) followed. Bader *v.* United States (116 Fed., 541), United States *v.* Schiff (139 Fed., 549; T. D. 26492), and United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) distinguished. Protests overruled as to the earnings, crosses, and hearts, there being no proof as to the component material of chief value.

No. 39579.—Protest 793486-58092 of Spaulding & Co. (Chicago).

IMITATION PEARL BEADS LOOSELY STRUNG.—Graduated imitation pearl beads loosely strung on flimsy thread, classified as in chief value of beads at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as beads strung loosely for facility in transportation only at 35 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. It was found that so far as the relative position of the beads are concerned they are not restrung in the same way. They were held dutiable at 35 per cent under paragraph 333 as beads strung loosely for facility in transportation.

No. 39580.—Protest 777070-56293 of G. W. Sheldon & Co. (Chicago).

MAGNIFYING GLASSES—MICROSCOPES—OPTICAL INSTRUMENTS.—Small pocket magnifying glasses classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstracts 38900, 38941, and 39249, and G. A. 7859 (T. D. 36174) the magnifying glasses in question were held dutiable as microscopes under paragraph 94, as claimed.

No. 39581.—Protest 777071-56466 of G. W. Sheldon & Co. (Chicago).

MAGNIFYING GLASSES—SURVEYORS' COMPASSES—MICROSCOPES—OPTICAL INSTRUMENTS.—Magnifying glasses classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94. Surveyors' compasses classified at 25 per cent under paragraph 94 as surveying instruments are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

On the authority of Abstract 39580, the magnifying glasses were held dutiable as microscopes under paragraph 94. Protest overruled as to the compasses classified as surveying instruments under paragraph 94.

BEFORE BOARD 2, APRIL 19, 1916.

No. 39582.—Protest 787261 of Park & Tilford (New York).

BOXES COVERED WITH SURFACE-COATED PAPER.—Merchandise described by the appraiser as "fancy boxes composed of cardboard and paper with silk lining, some with a silk cover, silk chief value in all instances," classified as manufactures of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913, is claimed dutiable at 35 per cent under paragraph 324.

FISCHER, *General Appraiser.* * * * Are these boxes which are admittedly covered with surface-coated paper and lined with silk covered by the provision in paragraph 324 for "boxes of paper or papier-mâché or wood covered with any of the foregoing papers or covered or lined with cotton or other vegetable fibers."

From this plain and unambiguous language, it is at once clearly obvious that the provision is in the alternative, and that it covers specifically either of these classes of merchandise (1) boxes of paper, papier-mâché, or of wood, if covered with any of the "foregoing papers" mentioned in the paragraph, and (2) boxes of paper, papier-mâché, or of wood, if covered or if lined with cotton or other vegetable fibers.

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The present merchandise consists of paper and cardboard boxes covered with surface-coated paper and lined with silk. They are, therefore, specifically provided for in the first half of said provision, which is wholly unrestricted as to the material which composes the lining, or even as to whether the boxes have any lining at all. The fact that these particular boxes are lined with silk, and that that material happens to constitute the component of chief value in the article, will not exclude them from the terms of the provision in paragraph 324. It is not denied that they are boxes, and of course, that designation is more specific than is the term manufactures, especially when these particular boxes are provided for eo nomine. A case directly in point is that of United States *v.* Zinn (2 Ct. Cust. Appls., 419; T. D. 32171). It was there held that certain baskets composed of straw, willow, rattan, and wood, colored and stained, and lined and padded with silk, which latter was the component of chief value in the article, were more specifically provided for as "baskets" under paragraph 214 of the act of 1909 than as "manufactures of silk, silk chief value" under paragraph 403 of said act. The court there said:

"Baskets" is an eo nomine term, and it would seem that the only requirement to bring it within the terms of paragraph 214 is to say that it is in fact the article described, namely, a basket composed of bamboo, wood, straw, or compositions of wood. If so, it is specifically provided for.

The articles in question answer as fully the requirements of the present paragraph 324 as did the baskets in the Zinn case, supra, those of paragraph 214 of the act of 1909. Here we have boxes of paper covered with surface-coated paper. They are therefore specifically provided for under the hereinabove quoted provision in paragraph 324, and we so hold.

To the extent indicated the protest is sustained; in all other respects it is overruled.

No. 39583.—Protest 776199 of Mexican Telegraph Co. (Galveston).

ARTICLES IN PART OF PLATINUM.—Merchandise classified as articles wholly or in part of platinum at 50 per cent ad valorem under paragraph 167, tariff act of 1913, is claimed dutiable at 20 per cent under the same paragraph.

Opinion by FISCHER, G. A. The testimony was found to negative the theory that platinum is the component material of chief value, without definitely showing whether brass, aluminum, or rubber is the chief component. Under the doctrine that a provision for articles "in part" of a specified material is more specific and controls over a provision for articles "in chief value" of such material, the protest was overruled. G. A. 7587 (T. D. 34651), Metzger *v.* United States (146 Fed., 132), and United States *v.* Guthman (159 Fed., 273; T. D. 28541) cited.

No. 39584.—Protests 765778, etc., of Kronfeld, Saunders & Co. (New York).

WEARING APPAREL IN PART OF BRAID AND ORNAMENTS.—Cotton, silk, or wool wearing apparel classified as articles in part of braid, ornaments, or netting, and as embroidered or appliquéd wearing apparel, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable under paragraph 256, 266, 291, 288, 318, 317, or 333.

Opinion by COOPER, G. A. It was found that the merchandise consists of wool trousers, and silk, cotton, or wool dresses trimmed with braid, ornaments, or made in part of netting, silk dresses having a corsage of roses and foliage sewed thereon at the waist line, and silk dresses trimmed with jet and crystal trimmings. On the authority of G. A. 7597 (T. D. 34755), Abstract 38637, United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), and Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464), the merchandise was held dutiable as silk, cotton, and wool wearing apparel under paragraphs 317, 256, and 291, respectively. One protest not filed by the owner, importer, consignee, or agent was dismissed.

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No. 39585.—Protest 775313 of Thos. Meadows & Co. (New York).

TUCKED SHIRT BOSOMS—WOOL WEARING APPAREL.—Merchandise classified as wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as cotton or wool wearing apparel at 30 per cent under paragraph 256 or at 35 per cent under paragraph 291.

Opinion by COOPER, G. A. Tucked shirt bosoms and slippers composed in chief value of cotton were held dutiable as cotton wearing apparel at 30 per cent under paragraph 256. Wool clothing trimmed with braid and slippers in chief value of wool were held dutiable as wearing apparel composed wholly or in chief value of wool at 35 per cent under paragraph 291. G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), and G. A. 7597 (T. D. 34755) followed.

No. 39586.—Protests 768828–55436, etc., of Mandel Bros. (Chicago).

COTTON QUILTS, TOWELS, BATH MATS, AND SHEETS.—Cotton quilts classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, cotton Turkish towels, bath mats, and sheets classified as cotton pile fabrics at 40 per cent under paragraph 257, and linen Turkish towels classified as flax pile fabrics at 40 per cent under paragraph 280, are claimed dutiable at 25 per cent under paragraph 264, at 30 per cent under paragraph 266, or at 35 per cent under paragraph 284.

Opinion by COOPER, G. A. On the authority of G. A. 7656 (T. D. 35019) and Abstract 36788 the cotton quilts, towels, bath mats, and sheets were held dutiable at 25 per cent under paragraph 264. The towels composed wholly or in chief value of flax were held properly classified as flax pile fabrics under paragraph 280.

No. 39587.—Protests 767021–55116, etc., of Carson, Pirie, Scott & Co. (Chicago).

COTTON TABLE DAMASK.—Merchandise classified as Jacquard figured manufactures of cotton at 25 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton table damask at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. On the authority of Abstract 38815 union table damask in chief value of cotton was held properly classified as Jacquard figured manufactures of cotton under paragraph 258. The cotton table damask was held dutiable under paragraph 263 as claimed. G. A. 7630 (T. D. 34903) followed

No. 39588.—Protests 752910–51341, etc., of Marshall Field & Co et al. (Chicago).

COTTON CLOTH—TABLE DAMASK—QUILTS.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at the appropriate rate under paragraph 252. Cotton table damask and cotton quilts classified under paragraph 258 are claimed dutiable at 25 per cent under paragraphs 263 and 264, respectively.

Opinion by COOPER, G. A. On the authority of United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), affirming G. A. 7618 (T. D. 34858), the Jacquard figured cotton cloth was held dutiable under paragraph 252 as claimed. Cotton table damask was held dutiable under paragraph 263. G A. 7630 (T. D. 34903) followed. On the authority of Abstract 36788 the cotton quilts were held dutiable under paragraph 264.

No. 39589.—Protests 763490, etc., of Knauth, Nachod & Kuhne (New York).

COTTON CLOTH—COTTON BLANKETS.—Woven figured cotton cloth and cotton blankets classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable under paragraphs 252 and 264, respectively.

Opinion by COOPER, G. A. On the authority of G. A. 7748 (T. D. 35577) and G. A. 7618 (T. D. 34858) the cotton cloth in question was held dutiable under paragraph 252 as claimed. The blankets were held dutiable at 25 per cent under paragraph 264. Protests sustained in part.

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BEFORE BOARD 1, APRIL 21, 1916.

No. 39590.—Protests 782983, etc., of James G. Johnson & Co. (New York).

IMITATION JET HATPINS—SLIDES—JEWELRY.—Merchandise classified as jewelry or millinery ornaments at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed dutiable under paragraphs 84, 95, 158, and 167.

Opinion by SULLIVAN, G. A. Hatpins with tops of imitation jet and imitation baroque pearl, and ornaments resembling hatpins having a shank of black celluloid of a pinlike appearance with a blunt point and an ornamental head composed of black faceted glass or paste imitation jet, were held properly classified as jewelry under paragraph 356. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) distinguished. Ornaments for women's hats in the shape of slides composed of colored glass or paste and enameled and gilded brass were held properly classified as millinery ornaments under paragraph 356.

No. 39591.—Protests 752349, etc., of Morimura Bros. (Seattle and New York).

EASTER BASKETS.—Easter baskets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 175.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7790 (T. D. 35796) the merchandise in question was held dutiable as baskets under paragraph 175, as claimed.

BEFORE BOARD 2, APRIL 21, 1916.

No. 39592.—Protests 790982, etc., of American Express Co. et al. (New York).

TIMERS.—Articles designed for timing horse races and other speed contests, as well as for use by physicians in timing the heart and pulse beats, classified as watches at 30 per cent ad valorem under paragraph 161, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. The timers in question were held dutiable under paragraph 167, as claimed. G. A. 7827 (T. D. 35971) followed.

No. 39593.—Protests 739312, etc., of American Express Co. (New York).

BEET KNIFE SHARPENERS—SUGAR MACHINERY.—Articles known as "fraises," consisting of circular steel files about 4 inches in diameter by one-fourth of 1 inch in thickness, employed to keep sharpened the knives or blades of beet-slicing machines used in the manufacture of beet sugar, classified at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed entitled to free entry as parts of machinery for use in the manufacture of sugar, under paragraph 391.

Opinion by FISCHER, G. A. On the authority of United States *v.* American Express Co. (6 Ct. Cust. Appls., 494; T. D. 36124), affirming G. A. 7687 (T. D. 35141), the fraises in question were held free of duty under paragraph 391, as claimed.

No. 39594.—Protest 750365 of J. J. Gavin & Co. (New York).

WEARING APPAREL IN PART OF BRAID.

COOPER, *General Appraiser:* The merchandise covered by this protest was returned at 60 per cent ad valorem under paragraph 358 of the act of 1913. The advisory classification of the several items made by the appraiser on the invoice is as follows:

(1) The merchandise invoiced as item 2582, consisting of children's cotton coats ornamented and trimmed with braid, was classified as "embroidered, appliquéd, or lace-trimmed wearing apparel."

(2) The merchandise invoiced as items 2591, 2593, and 24860, consisting of wool jackets ornamented with braid, was classified as "wearing apparel in part of braid."

(3) The merchandise invoiced as item 23622, consisting of wool capes, was classified as "wearing apparel with trimming."

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(4) The merchandise invoiced as items 4185, 4187, and 4188, consisting of cotton scarfs, was classified as "wearing apparel with trimming."

(5) The merchandise invoiced as items 3320 and 3321 was classified as "wearing apparel, appliquéd." The sample of this item introduced in evidence consists of a carriage robe trimmed with ornaments.

(6) The merchandise invoiced as item 5382, consisting of children's wool jackets, was classified as "wearing apparel, scalloped."

(7) The merchandise invoiced as items 90135 and 90534, consisting of knitted booties ornamented with a design made of a different colored yarn, was classified as "embroidered wearing apparel."

There is no provision in the paragraph for "wearing apparel in part of braid or trimmings," and where such return was made on the invoice by the appraiser, the collector must have classified the merchandise as "articles made in whole or in part of any of the foregoing fabrics or articles," the words "foregoing fabrics or articles" referring to braid and trimmings in this case. Such was probably the classification of the merchandise covered by our second, third, and fourth findings.

The claim relied upon by the importers is that the merchandise is dutiable at 30 per cent ad valorem as cotton wearing apparel under paragraph 256, or at 35 per cent ad valorem as wool wearing apparel under paragraph 291.

In the case of Hamburger, Levine Co., G. A. 7525 (T. D. 34087), affirmed in United States *v.* Hamburger (5 Ct. Cust. Appls., 217; T. D. 34382), the board held that children's dresses trimmed with braid or trimming were not appliquéd within the meaning of that term. As the merchandise covered by our first finding is of the same character and is neither embroidered nor lace trimmed, following the Hamburger case, *supra*, we hold the same dutiable as cotton wearing apparel at 30 per cent ad valorem under paragraph 256, and, as to said merchandise, the protest is sustained.

In the case of the United States Express Co., G. A. 7597 (T. D. 34755), the board held that clothing trimmed with braid was more specifically provided for as wearing apparel under paragraph 291 than as articles in part of braid under paragraph 358, and in the case of Snow's United States Sample Express Co., G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the board held that tucked shirt bosoms were more specifically provided for as cotton wearing apparel under paragraph 256 than as articles in part of tuckings. Following said decisions we hold the merchandise covered by our second and third findings dutiable at 35 per cent ad valorem as wool wearing apparel under paragraph 291, and the merchandise covered by our fourth finding dutiable as cotton wearing apparel at 30 per cent ad valorem under paragraph 256, and, as to said merchandise, the protest is sustained.

In the case of Morimura Bros. (Abstract 37624), affirmed in Morimura *v.* United States (6 Ct. Cust. Appls., 475; T. D. 36119), the board held that lamp shades trimmed with braid were dutiable as articles in part of braid rather than as manufactures of silk. The carriage robes covered by our fifth finding are not "wearing apparel, appliquéd," as returned, but they are articles made in part of trimmings and, on the authority of the decision cited, we hold they are dutiable at 60 per cent ad valorem under paragraph 358. As to said merchandise the protest is overruled.

In the case of Lord & Taylor (G. A. 7644, T. D. 34930), appealed to the Court of Customs Appeals but dismissed by consent (T. D. 35509), the board held that the provision for "wearing apparel, embroidered, * * * by whatever name known" in paragraph 358 was so specific and all inclusive that it would include articles of the character therein specified whether they are mentioned by name in another paragraph of the act or not, and embroidered stockings were held dutiable under said provision rather than under the provision for "stockings" under paragraph 260. The same ruling is applicable to the embroidered and scalloped wearing apparel covered by our sixth and seventh findings, and, as to said merchandise, upon the authority of said decision, the protest is overruled. * * *

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No. 39595.—Protest 784016 of H. E. Lewis (Portland, Oreg.)

COTTON TABLE COVERS.—Table covers made by joining together strips of cotton cloth by fancy cross stitches, leaving an openwork effect between the strips, classified as embroidered articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as manufactures of cotton at 30 per cent under paragraph 266.

Opinion by COOPER, G. A. On the authority of Abstract 37991 the articles were found not embroidered and held dutiable under paragraph 266, as claimed.

No. 39596.—Protest 784203 of R. H. Macy & Co. (New York).

VELVET TABLE COVERS—COTTON TURKISH TOWELS.—Merchandise classified as articles made of pile fabric at 40 per cent ad valorem under paragraph 257, tariff act of 1913, is claimed dutiable at 35 per cent under paragraph 258 and at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. Velvet table covers were held dutiable as Jacquard figured upholstery goods under paragraph 258 as claimed. Downing *v.* United States (6 Ct. Cust. Appls., 447; T. D. 35984) followed. Turkish towels were held dutiable at 25 per cent under paragraph 264. G. A. 7656 (T. D. 35019) followed.

BEFORE BOARD 3, APRIL 21, 1916.

No. 39597.—Protest 788245 of B. D. Nordlinger (New York).

DRIED CHERRIES IN KEGS.

WAITE, *General Appraiser.* The importation involved in this case is what is described in the invoice as 50 kegs sour cherries. The testimony shows that they are ripe cultivated cherries imported from Italy; that when ripe they are gathered and placed upon a cloth and allowed to dry in the sun for two or three days, when they are put in barrels without any other treatment or manipulation, in which condition they are imported. They were assessed for duty under paragraph 217, tariff act of 1913, as dried fruits. The importer claims they are dutiable at 10 cents a bushel as ripe cherries.

We gather from the testimony in the case that they are in a moist condition, that juice can be poured from the barrel, and that when they are handled they will stain the hands. We think the case is governed by the decision of the Court of Customs Appeals in Levy & Levis Co. *v.* United States (5 Ct. Cust. Appls., 89; T. D. 34130) on Dalmatian cherries. Those cherries were allowed to remain on the tree until they became overripe and more or less dried. They were held by the board to be dried cherries, Abstract 31849 (T. D. 33304). The board was reversed in that case, the Court of Customs Appeals stating, Levy & Levis Co. *v.* United States (5 Ct. Cust. Appls., 89; T. D. 34130):

> In our opinion, fruits which have been permitted to become overripe, but which still contain so much of the natural juices that the exudation of the juices causes the goods to become "wet" and the barrels containing them discolored are not dried fruits, as that term is popularly understood. Certainly a fruit as juicy as that is not of the class of dried fruits typified by prunes, raisins, dried apples, dried peaches, dried currants, and the like.

The only question here being whether these cherries are dried, we must hold, following the above authority, that they are not. The protest is therefore sustained.

No. 39598.—Protest 778435 of Maltus & Ware (New York).

NARCISSUS BULBS—MOTHER FLOWERING BULBS.—Narcissus bulbs classified at $1 per thousand under paragraph 210, tariff act of 1913, are claimed free of duty as mature mother flowering bulbs under the proviso to paragraph 210.

Opinion by WAITE, G. A. It was found that the narcissus bulbs in question are mature mother flowering bulbs imported exclusively for propagating purposes. They were held free of duty under paragraph 210.

No. 39599.—Protest 791790 of E. O. Hausberg (New York).

TIME DETECTORS—WATCHMEN'S CLOCKS—ENTIRETIES.—The merchandise in question is watchmen's clocks composed of a clock movement, a number of keys, and a

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leather pouch. The keys were classified as manufactures of metal under paragraph 167 and the pouches as manufactures of leather under paragraph 360. They are claimed dutiable as entireties as time detectors at 15 per cent under paragraph 161.

Opinion by HAY, G. A. The merchandise was held dutiable as entireties under paragraph 161, as claimed.

No. 39600.—Protest 791715 of Wagner Bros. & Co. (New York).

DENTAPHONES—AUDIPHONES—FANS.—The appraiser described the merchandise as "audiphones of rubber, consisting of flat fans of hard rubber with a silk or wool braid or cord attached to the handle and extending almost to the top of the fan, which when drawn makes the fan into the shape of a sounding board and is used in this way by persons as an aid to hearing." They were classified as fans at 50 per cent ad valorem under paragraph 349, tariff act of 1913, and are claimed dutiable as manufactures of hard rubber at 25 per cent under paragraph 369.

Opinion by HAY, G. A. It was found that the article in question is not a fan. It was held dutiable as a manufacture of hard rubber under paragraph 369, as claimed.

No. 39601.—Protest 791263 of Southern Pacific Co. (San Francisco).

SHAKING MACHINE—SCIENTIFIC APPARATUS.—Merchandise invoiced as a shaking machine, classified under paragraph 167, tariff act of 1913, is claimed free of duty as scientific apparatus under paragraph 573.

Opinion by HAY, G. A. It was found that the machine, which is used for research work in the Harriman Research Laboratory, comes within the purview of paragraph 573. It was held entitled to free entry.

No. 39602.—Protest 788375 of Geo. Borgfeldt & Co. (New York).

CHINA GUIDES—BUTTONS.—Small, plain, white china knobs used by worsted and cotton yarn concerns in connection with their machines, classified under paragraph 80, tariff act of 1913, are claimed dutiable as buttons under paragraph 339.

Opinion by HAY, G. A. On the evidence presented the protest was overruled.

No. 39603.—Protests 786763, etc., of M. J. Hogan (Milwaukee).

ROOFING SLATE—MINERAL SUBSTANCES.—Artificial roofing slate, classified as earthy or mineral substances, wholly or partly manufactured under paragraph 81, tariff act of 1913, is claimed dutiable as manufactures of asbestos under paragraph 367.

Opinion by HAY, G. A. It was held that the determination of the component material of chief value in an imported article is to be ascertained in reference to the value of the components in the country where the article is produced. United States *v.* Downing (146 Fed., 56; T. D. 27025) cited. The testimony was held not sufficient to sustain the claim.

No. 39604.—Protests 786720, etc., of Merck & Co. (New York).

WEIGHT OF CREOSOTE.—Creosote assessed for duty upon the invoice weight is claimed dutiable at the weight found by the United States weigher, which is less.

Opinion by HAY, G. A The weights reported by the weigher are not challenged by the Government, and the creosote was held dutiable in accordance with the weigher's returns.

No. 39605.—Protest 785623 of Mrs. Sealy Hutchings (Galveston).

WEARING APPAREL—PERSONAL EFFECTS.—Certain dresses are claimed entitled to free entry as personal effects under paragraph 642, tariff act of 1913.

Opinion by HAY, G. A. It was found that the dresses in question did not arrive in time to accompany their owner on the steamer coming to the United States. They were held entitled to free entry under paragraph 642, as claimed.

No. 39606.—Protest 783935 of Thomas A. Blakely (Los Angeles).

AMERICAN GOODS RETURNED—REGULATIONS—WAIVER.—Certain semiprecious stones are claimed entitled to free entry as American goods returned under paragraph

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404, tariff act of 1913. The regulations were not complied with in that the certificate of exportation was not filed with the collector.

HAY, *General Appraiser:* * * * Article 571 of the Customs Regulations of 1908 provides that the collector may waive evidence of exportation if the value be less than $100, and article 573 provides that evidence of exportation may be waived by the collector and naval officer, if any, when satisfied from examination that the goods are of American origin. At the hearing of this case a letter from the collector was offered in evidence in which he waives the production of the certificate "if the merchandise is of American manufacture." Counsel for the Government objected to the letter upon the ground that the collector has no authority to waive the certificate now, as he has no longer jurisdiction of the merchandise. This objection was taken under advisement.

The collector's letter, we think, constitutes a waiver of the certificate of exportation as provided for in article 573 of the regulations, and it is, therefore, properly a part of the record in this case. The objection of counsel for the Government is overruled. The testimony in this case shows that the merchandise is of domestic origin, free of duty under paragraph 404, as American goods returned. The protest is sustained and the collector directed to reliquidate the entry accordingly.

No. 39607.—Protest 780549 of Jas. W. Elwell & Co. (New York).

SEA STORES—WINE.—Eight casks of wine transferred from one vessel to another are claimed free of duty under section 17 of the act of March 3. 1897.

Opinion by HAY, G. A. It is not apparent from the record that the two vessels are of the same owner, nor does it satisfactorily appear that the wine is "sea stores" within the meaning of that term as used in the statute. G. A. 4746 (T. D. 22433) cited. Protest overruled.

No. 39608.—Protests 778810, etc., of C. J. Tower (Buffalo).

NITROGEN-ARGON GAS.—Nitrogen-argon gas classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, is claimed free of duty as a crude mineral under paragraph 549, or dutiable as waste at 10 per cent, under paragraph 384.

Opinion by HAY, G. A. The gas in question is obtained by heating calcium carbide in an electric oven in the presence of nitrogen gas. It is used in the manufacture of electric lights. Protests overruled.

BEFORE BOARD 1, APRIL 4, 1916.

No. 39609.—Protests 794418-59078, etc., of Marshall Field & Co. (Chicago).

UNFINISHED NECKLACES—IMITATION PEARL BEADS—JEWELRY.—Imitation pearl beads strung on cotton strings, the beads graduated in size, classified as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable under the provision in the same paragraph for imitation pearl beads, loosely strung, at 35 per cent.

Opinion by SULLIVAN, G. A. Protests overruled on the authority of Abstract 39238, holding unfinished necklaces dutiable as jewelry under paragraph 356. (This is in correction of Abstract 39505.)

(T. D. 36349.)

Drawback on condensed milk.

Drawback on condensed milk manufactured by the Bridgeton Condensed Milk Co., of Bridgeton, N. J., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *April 24, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on condensed milk manufactured by the Bridgeton Condensed Milk Co., of Bridgeton, N. J., with the use of refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept, which will show, in the case of each lot of condensed milk manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of refined sugar and the quantity and character of milk used, the quantity of condensed milk produced, and the brand name thereof. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported condensed milk, with a maximum of the quantity used, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated April 17, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on condensed milk exported on or after March 29, 1916.

Respectfully, WM. P. MALBURN,
(103025–4.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36350.)

Drawback on cartridges, shells, and shot.

Drawback on cartridges, loaded shells, and shot manufactured by the Peters Cartridge Co., of Cincinnati, Ohio, with the use of imported lead and antimony.—T. D. 32477 of May 2, 1912, and T. D. 34356 of April 7, 1914, revoked.

TREASURY DEPARTMENT, *April 24, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cartridges, loaded shells, and chilled shot manufactured by the Peters Cartridge Co., of Cincinnati, Ohio, with the use of wholly imported lead and antimony or with the use of such imported materials in combination with the same kind of domestic materials, and on soft shot manufactured by the said company with the use of wholly imported lead or with the use of imported lead in combination with domestic lead.

A record shall be kept, which will show, in the case of each lot of loaded shells exported with benefit of drawback, the number of shells of each brand and gauge contained in the shipment and the quantity, character, and identity of shot appearing in the shells of each brand

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and gauge. A sworn abstract from such record shall be filed with the drawback entry.

In liquidation, the quantities of antimony and lead which may be taken as a basis for the allowance of drawback shall not exceed the quantities appearing in the exported articles, as shown by the sworn statement of the manufacturers, dated February 19, 1916, and, in the case of loaded shells, the abstract from the records of the manufacturers provided for above.

Supplemental sworn schedules covering cartridges manufactured with the use of bullets produced in whole or in part from imported lead and antimony may be filed, and upon verification of the same drawback may be allowed on the cartridges covered thereby.

T. D. 32477 of May 2, 1912, and T. D. 34356 of April 7, 1914, are hereby revoked.

Respectfully, WM. P. MALBURN,
(5268–1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36351.)

Drawback on lubricating oils and tanning extracts.

Drawback on lubricating oils and tanning extracts manufactured by the Vacuum Oil Co., of New York, N. Y., with the use of imported rapeseed oil and chrome alum.—T. D. 24641 of August 28, 1903, T. D. 27300 of April 21, 1906, T. D. 29218 of August 20, 1908, and T. D. 31610 of May 20, 1911, revoked.

TREASURY DEPARTMENT, *April 25, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on lubricating oils manufactured by the Vacuum Oil Co., of New York, N. Y., with the use of imported rapeseed oil, and on tanning extract manufactured by the said company with the use of imported chrome alum.

A manufacturing record shall be kept, which will show, in the case of each lot of lubricating oil or tanning extract manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity of lubricating oil or tanning extract produced, and the quantity and identity of the imported rapeseed oil or chrome alum appearing therein. An abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported rapeseed oil or chrome alum appearing in the exported lubricating oil or tanning extract, as shown by the abstract from the manufacturing record.

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The sworn statement and a supplemental statement of the manufacturers, dated February 25 and April 7, 1916, respectively, are transmitted herewith for filing in your office.

T. D. 24641 of August 28, 1903, T. D. 27300 of April 21, 1906, T. D. 29218 of August 20, 1908, and T. D. 31610 of May 20, 1911, are hereby revoked.

Respectfully, BYRON R. NEWTON,
(36693.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36352.)

Common carrier.

Discontinuing the bonded route of the Chicago, Milwaukee & Puget Sound Railway Co. as a common carrier for the transportation of dutiable merchandise.

TREASURY DEPARTMENT, *April 25, 1916.*

SIR: At the request of the president of the Chicago, Milwaukee & Puget Sound Railway Co. and upon your recommendation, the common carrier's bond of the said company, approved June 15, 1909 (T. D. 29911), is hereby discontinued, as it appears that the lines covered by said bond are now covered by the bond of the Chicago, Milwaukee & St. Paul Railway.

The fact and date of discontinuance should be noted on the copy of the bond on file in the customs office at Port Townsend, in your collection district, and should be retained without cancellation to meet any liability which may have accrued thereunder.

Respectfully, BYRON R. NEWTON,
(66637.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Seattle, Wash.*

(T. D. 36353.)

Drawback on confectionery.

Drawback on confectionery manufactured by the W. F. Schrafft & Sons Corporation, of Boston, Mass., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *April 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on confectionery manufactured by the W. F. Schrafft & Sons Corporation, of Boston,

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Mass., with the use of refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept, showing, in the case of each lot of confectionery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the kind of confectionery manufactured, the quantity produced, and the quantity and identity of the refined sugar appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported confectionery, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated April 15, 1916, is transmitted herewith, for filing in your office.

Respectfully, BYRON R. NEWTON,
(100732–6.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36354.)

Importation and sale of viruses, serums, etc.—List of licensed manufacturing establishments.

TREASURY DEPARTMENT, *April 27, 1916.*

To collectors and other officers of the customs:

The following table contains a list of the establishments holding licenses issued by the Treasury Department in accordance with the act of Congress approved July 1, 1902, entitled "An act to regulate the sale of viruses, serums, toxins, and analogous products in the District of Columbia, to regulate interstate traffic in said articles, and for other purposes."

The licenses granted to the following establishments for the products mentioned do not imply an indorsement of the claims made by the manufacturers for their respective preparations. The granting of a license means that inspections of the establishment concerned and laboratory examinations of samples of its products are made regularly to insure the observance of safe methods of manufacture to ascertain freedom from contamination, and to determine the potency of diphtheria antitoxin, tetanus antitoxin, and vaccine virus, for which potency standards or tests have been established.

(51022.) BYRON R. NEWTON, *Assistant Secretary.*

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AMERICAN ESTABLISHMENTS.

No. of license.	Name.	Products.
1	Parke, Davis & Co., Detroit, Mich.....	Antidysenteric serum; antigonococcic serum; antimeningococcic serum; antirabic virus; antistreptococcic serum; antitubercle serum; cholera vaccine prophylactic; diphtheria antitoxin; erysipelas and prodigiosus toxin; normal horse serum; tetanus antitoxin; thyroidectomized horse serum; tuberculin B. E., tuberculin B. F., tuberculin old, tuberculin T. R.; vaccine virus; bacterial vaccines made from acne bacillus, acne diplococcus, colon bacillus, Friedlander bacillus, gonococcus, influenza bacillus, meningococcus, micrococcus catarrhalis, paratyphoid bacillus A, paratyphoid bacillus B, pertussis bacillus, pneumococcus, pseudodiphtheria bacillus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus; and modified bacterial derivatives prepared from colon bacillus, diphtheria bacillus, gonococcus, paratyphoid bacillus A, paratyphoid bacillus B, pneumococcus, pyocyaneus bacillus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus.
2	H. K. Mulford Co., Philadelphia, Pa...	Antianthrax serum; antidysenteric serum; antimelitensis serum; antimeningococcic serum; antipneumococcic serum; antirabic virus; antistreptococcic serum; diphtheria antitoxin; normal horse serum; pollen vaccine; tetanus antitoxin; tuberculin B. E., tuberculin B. F., tuberculin old, tuberculin T. R.; vaccine virus; bacterial vaccines prepared from acne bacillus, cholera vibrio, colon bacillus, diphtheria bacillus, dysentery bacillus, gonococcus, influenza bacillus, meningococcus, micrococcus catarrhalis, micrococcus neoformans, paratyphoid bacillus A, paratyphoid bacillus B, pertussis bacillus, plague bacillus, pneumococcus, pseudodiphtheria bacillus, pyocyaneus bacillus, staphylococcus albus, staphylococcus aureus, streptococcus pyogenes, and typhoid bacillus; and sensitized bacterial vaccines prepared from acne bacillus, cholera vibrio, colon bacillus, gonococcus, influenza bacillus, meningococcus, micrococcus catarrhalis, paratyphoid bacillus A, paratyphoid bacillus B, pertussis bacillus, pneumococcus, pseudodiphtheria bacillus, staphylococcus albus, staphylococcus aureus, streptococcus pyogenes, and typhoid bacillus.
3	Dr. H. M. Alexander & Co., Marietta, Pa.	Antirabic virus; antityphoid vaccine; diphtheria antitoxin; normal horse serum; tetanus antitoxin; tubercle bacillus extract Dixon, tubercle bacillus suspension Dixon, tuberculin B. E., tuberculin B. F. tuberculin old, tuberculin T. R.; and vaccine virus
6	The Slee Laboratories, Swiftwater, Pa..	Antistreptococcic serum; diphtheria antitoxin; normal horse serum; tetanus antitoxin; and vaccine virus.
8	The Cutter Laboratory, Berkeley, Cal...	Antimeningococcic serum; antipneumococcic serum; antirabic virus; antistreptococcic serum; diphtheria antitoxin; normal horse serum; tetanus antitoxin; tuberculin B. E., tuberculin B. F., tuberculin old, tuberculin T. R.; vaccine virus; and bacterial vaccines prepared from acne bacillus, colon bacillus, Friedlander bacillus, gonococcus, micrococcus catarrhalis, pertussis bacillus, pneumococcus, pseudodiphtheria bacillus; staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus.
14	Bureau of Laboratories, Health Department, New York City.	Antigonococcic serum; antimeningococcic serum; antipneumococcic serum; antirabic virus; antistreptococcic serum; diphtheria antitoxin; normal horse serum; tetanus antitoxin; old tuberculin; vaccine virus; and bacterial vaccines prepared from glanders bacillus, gonococcus, pertussis bacillus; pneumococcus, staphylococcus albus, staphylococcus aureus, streptococcus pyogenes, and typhoid bacillus.
16	National Vaccine and Antitoxin Institute, Washington, D. C.	Diphtheria antitoxin; normal horse serum; tetanus antitoxin; vaccine virus; and bacterial vaccines prepared from colon bacillus, Friedlander bacillus, gonococcus, micrococcus catarrhalis, micrococcus tetragenus, paratyphoid bacillus A, paratyphoid bacillus B, pneumococcus, pseudodiphtheria bacillus, pyocyaneus bacillus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus.
17	Lederle Antitoxin Laboratories, Pearl River, N. Y.	Antigonococcic serum; antimeningococcic serum; antipneumococcic serum; antirabic virus; antistreptococcic serum; diphtheria antitoxin; normal horse serum; pollen vaccine; tetanus antitoxin; vaccine virus; and bacterial vaccines prepared from acne bacillus, cholera vibrio, colon bacillus, Friedlander

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AMERICAN ESTABLISHMENTS—Continued.

No of license.	Name.	Products.
		bacillus, gonococcus, influenza bacillus, meningococcus, micrococcus catarrhalis, paratyphoid bacillus A, paratyphoid bacillus B, pertussis bacillus, plague bacillus, pneumococcus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus.
19	Serum Division, Memorial Institute for Infectious Diseases, 637 South Wood Street, Chicago, Ill.	Diphtheria antitoxin.
23	Bacterio-Therapeutic Laboratory, Asheville, N. C.	Watery extract of tubercle bacilli (von Ruck); modified tubercle bacillus derivative (von Ruck).
30	Dr. G. H. Sherman, 419 St. Aubin Street, Detroit, Mich.	Bacterial vaccines prepared from acne bacillus, colon bacillus, Friedlander bacillus, gonococcus, influenza bacillus, meningococcus, micrococcus, catarrhalis, paratyphoid bacillus A, paratyphoid bacillus B, pertussis bacillus, pneumococcus, pseudodiphtheria bacillus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, nonvirulent tubercle bacillus, and typhoid bacillus.
40	Hygienic Laboratory, California State Board of Health, Berkeley, Cal.	Antirabic virus; and sensitized typhoid vaccine.
43	The Abbott Laboratories, Abbott Alkaloidal Co., Chicago, Ill.	Bacterial vaccines prepared from acne bacillus, colon bacillus, Friedlander bacillus, gonococcus, pneumococcus, staphylococcus albus, staphylococcus aureus, streptococcus pyogenes, and typhoid bacillus.
46	New York Pasteur Institute, 361 West Twenty-third Street, New York City.	Antirabic virus.
49	Dr. W. T. McDougall, 707 Parallel Avenue, Kansas City, Kans.	Do.
50	St. Louis Pasteur Institute, 803 North Garrison Avenue, St. Louis, Mo.	Do.
51	The Upjohn Co., Kalamazoo, Mich.....	Bacterial vaccines prepared from colon bacillus, Friedlander bacillus, gonococcus, influenza bacillus, micrococcus catarrhalis, micrococcus tetragenus, paratyphoid bacillus A, paratyphoid bacillus B, pertussis bacillus, pneumococcus, pseudodiphtheria bacillus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus.
52	E. R. Squibb & Sons' Research and Biological Laboratories, New Brunswick, N. J.	Antigonococcic serum; antimeningococcic serum; antirabic virus; antistreptococcic serum; diphtheria antitoxin; leucocyte extract; normal horse serum; tetanus antitoxin; and bacterial vaccines prepared from acne bacillus, colon bacillus, gonococcus, meningococcus, pertussis bacillus, pneumococcus, pyocyaneus bacillus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus.
53	Laboratory of Clinical Pathology, 1208 Wyandotte Street, Kansas City, Mo.	Antirabic virus.
54	Dr. James McI. Phillips, 2057 North High Street, Columbus, Ohio.	Do.
56	Eli Lilly & Co., Indianapolis, Ind.....	Antirabic virus, antistreptococcic serum, diphtheria antitoxin; normal horse serum; normal sheep serum; tetanus antitoxin; vaccine virus; and bacterial vaccines prepared from acne bacillus, colon bacillus, Friedlander bacillus, gonococcus, influenza bacillus, meningococcus, micrococcus catarrhalis, paratyphoid bacillus A, paratyphoid bacillus B, pertussis bacillus, pneumococcus, pyocyaneus bacillus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus.
57	American Biological Co., 600 F Street, Washington, D. C.	Bacterial vaccines prepared from acne bacillus, gonococcus, staphylococcus albus, staphylococcus aureus, streptococcus pyogenes, and typhoid bacillus.
58	Swan Myers Co., 219 North Senate Avenue, Indianapolis, Ind.	Bacterial vaccines prepared from colon bacillus, Friedlander bacillus, gonococcus, micrococcus catarrhalis, pertussis bacillus, pneumococcus, staphylococcus albus, staphylococcus aureus, streptococcus pyogenes, and typhoid bacillus.
59	International Laboratories, 65 Irving Place, New York City.	Leucocyte extract (rabbit).
60	Greeley Laboratories, Inc., 655 Huntington Avenue, Boston, Mass.	Bacterial vaccines prepared from acne bacillus, colon bacillus, gonococcus, micrococcus catarrhalis, pertussis bacillus, pneumococcus, pseudodiphtheria bacillus, pyocyaneus bacillus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus.
61	Stafford Biological Laboratories, Smith Building, Detroit, Mich.	Bacterial vaccines prepared from acne bacillus, colon bacillus, Friedlander bacillus, gonococcus, influenza bacillus, micrococcus catarrhalis, pertussis bacillus, pneumococcus, pseudodiphtheria bacillus, staphylococcus albus, staphylococcus aureus, staphylococcus citreus, streptococcus pyogenes, and typhoid bacillus.

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No. of license.	Name.	Products.
11	Institut Pasteur de Paris, Paris, France. Selling agents for the United States: Pasteur Laboratories of America, 336 West Eleventh Street, New York City.	Antidysenteric serum, antimeningococcic serum, antiplague serum, antiplague vaccine, antistreptococcic serum, antitetanic serum, antivenomous serum, and diphtheria antitoxin.
12	Chemische Fabrik auf Actien, Berlin, Germany.	Antigonococcus vaccine, antistreptococcic serum, diphtheria antitoxin, and tuberculin.
18	Burroughs, Wellcome & Co., London, England.	Anticolon bacillus serum, antidysenteric serum, antigonococcic serum, antimeninrococcic serum, antistaphylococcic serum, antistreptococcic serum, antitetanic serum, antityphoid serum, diphtheria antitoxin, normal horse serum, tuberculins, and bacterial vaccines prepared from acne bacillus, cholera vibrio, colon bacillus, influenza bacillus, gonococcus, micrococcus catarrhalis, micrococcus melitensis, pneumococcus, septus bacillus, staphylococci, streptococci, and typhoid bacillus.
21	Swiss Serum and Vaccine Institute, Berne, Switzerland.	Antidysenteric serum, antimeningococcic serum, antiplague serum, antipneumonic serum, antistreptococcic serum, antitetanic serum, diphtheria antitoxin, tuberculins, and bacterial vaccines prepared from cholera vibrio, colon bacillus, plague bacillus, pneumococcus, staphylococci, streptococci, and typhoid bacillus.
22	Institut Bactériologique de Lyon, Lyons, France.	Antidiphtheric serum and normal goat serum.
24	Farbwerke, vormals Meister Lucius und Brüning, Hoechst on Main, Germany.	Antidysenteric serum, antimeningococcic serum, antipneumonic serum, antistreptococcic serum, antitetanic serum, diphtheria antitoxin, tuberculins.
27	Institut Pasteur de Lille, Lille, France. Selling agents for the United States: Pasteur Laboratories of America, 336 West Eleventh Street, New York City.	Antivenomous serum.
29	The Behringwerk, Marburg, Germany..	Antitetanic serum and tuberculin.
31	E. Merck, Darmstadt, Germany.....	Antimeningococcic serum, antipneumonic serum, antistreptococcic serum, diphtheria antitoxin, jequiritol serum, leucofermantin (antitryptic sheep serum), normal horse serum (liquid and dried), tuberculins, and bacterial vaccines prepared from colon bacillus, dysentery bacillus, gonococcus, pneumococcus, staphylococci, streptococci, and typhoid bacillus.
32	Kalle & Co., Biebrich, Germany.....	Tuberculin (Rosenbach).
35	Dr. Carl Spengler, Davos-Platz, Switzerland.	I. K. immune blood.
38	Laboratorio di Terapia Sperimentale (Bruschettini), Genoa, Italy.	Tuberculosis serum vaccine and tuberculosis vaccine.
39	Pharmaceutisches Institut Ludwig Wilhelm Ganz, Oberursel bei Frankfort a. M., Germany.	Antidysenteric serum.
48	Inoculation Department, St. Mary's Hospital, London, England.	Pollicine, and bacterial vaccines prepared from acne bacillus, gonococcus, influenza bacillus, neumococcus, staphylococci, and streptococci.
55	Chemische Fabrik Güstrow, Güstrow i. M., Germany.	Staphylococcus vaccine.

(T. D. 36355.)

Drawback on confectionery.

Drawback on confectionery manufactured by the Beech-Nut Packing Co., of Canajoharie, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *April 28, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on confectionery designated as "mint tablets" manufactured by the Beech-Nut Packing Co., of Canajoharie, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.

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The quantity of refined sugar that may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported confectionery, as shown by the sworn statement of the manufacturers, dated April 17, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules covering new styles of containers, changes in the proportion of ingredients used, or in the weight of the finished product may be filed, and upon verification of such supplemental schedules drawback may be allowed on mint tablets manufactured and packed in accordance therewith.

Drawback may be allowed under these regulations on mint tablets exported on or after February 25, 1916.

Respectfully, BYRON R. NEWTON,
(96436-2.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36356.)

Drawback on pianos and player pianos.

Drawback on pianos and player pianos manufactured by J. & C. Fischer (Inc.), of New York, N. Y., with the use of imported tuning pins and music wire.—T. D. 30475 of March 31, 1910, T. D. 30829 of July 26, 1910, T. D. 31156 of December 29, 1910, and T. D. 31280 of February 7, 1911, revoked.

TREASURY DEPARTMENT, *April 28, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4, of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on pianos and player pianos manufactured by J. & C. Fischer (Inc.), of New York, N. Y., with the use of imported tuning pins and music wire.

The allowance shall not exceed the quantities of imported material appearing in the exported pianos and player pianos, as shown by the sworn statement of the manufacturers, dated April 19, 1916, which is transmitted herewith for the files of your office.

Supplemental sworn statements covering the manufacture of other pianos and player pianos, the use of other imported materials or changes in the quantities of imported materials used may be filed, and upon verification of such supplemental statements drawback may be allowed on the pianos or player pianos covered thereby.

T. D. 30475 of March 31, 1910, T. D. 30829 of July 26, 1910, T. D. 31156 of December 29, 1910, and T. D. 31280 of February 7, 1911, are hereby revoked.

Respectfully, BYRON R. NEWTON,
(66526.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36357.)

Drawback on baking powder.

Drawback on baking powder manufactured by the Royal Baking Powder Co., of New York, N. Y., with the use of bitartrate of potash and tartaric acid produced by the Tartar Chemical Co., of New York, N. Y., wholly from imported wine lees, argols, crude calcium tartrate, etc.—T. D. 18819 of January 17, 1898, and T. D. 30812 of July 20, 1910, revoked.

TREASURY DEPARTMENT, *April 28, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on baking powder known as "Royal Baking Powder," "Dr. Price's Cream Baking Powder," and "Cleveland's Superior Baking Powder," manufactured by the Royal Baking Powder Co., of New York, N. Y., at their factories located at Brooklyn, N. Y., and Chicago, Ill., with the use of bitartrate of potash (cream of tartar) and tartaric acid, produced by the Tartar Chemical Co., of New York, N. Y., wholly from imported wine lees, argols, crude calcium tartrate, etc., in accordance with the regulations of T. D. 36263 of March 23, 1916.

The quantities of bitartrate of potash and tartaric acid which may be taken as a basis for the allowance of drawback shall not exceed the quantities appearing in the exported baking powder, as shown by the sworn statement of the manufacturers, dated July 28, 1915, which is transmitted herewith for filing in your office.

As the manufacturers' statement shows only the aggregate quantity of both acids, stated in terms of bitartrate of potash, liquidation shall be made on the basis of the total acid content of the exported baking powder, and the lowest rate of drawback accruing to either acid.

A supplemental sworn statement of the manufacturers, dated March 13, 1916, is also transmitted herewith for your files.

T. D. 18819, of January 17, 1898, and T. D. 30812 of July 20, 1910, are hereby revoked.

Respectfully, BYRON R. NEWTON,
(70852.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36358.)

Window glass—Glass signs.

Appeal directed from decision of the Board of United States General Appraisers of April 4, 1916, Abstract 39495, involving the classification of certain glass signs.

TREASURY DEPARTMENT, *April 29, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 21st instant, inviting attention to the decision of the Board of United

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States General Appraisers of April 4, 1916, Abstract 39495, involving the classification of certain glass signs.

The merchandise was assessed with duty at the rate of 45 per cent ad valorem under the provisions of paragraph 84 of the tariff act of 1913 for "articles of every description composed wholly or in chief value of glass, ornamented or decorated in any manner, or cut, engraved, painted, decorated, ornamented, colored, stained, * * * etched, sand-blasted, frosted, * * * or ground." The board, however, held the merchandise to be subject to duty at the rate of seven-eighths of 1 cent per pound under the provisions of paragraph 85 of the said act for "unpolished, cylinder, crown, and common window glass, not exceeding one hundred and fifty square inches," together with the cumulative duty of 4 per cent ad valorem under paragraph 90 as having undergone some of the processes enumerated therein, such as sanding and flashing.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, BYRON R. NEWTON,
(104983.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36359.)

Undervaluation.

Special agents and appraising officers to report all information concerning undervaluation to the C. V. R. Bureau, appraiser's office, New York.

TREASURY DEPARTMENT, *May 1, 1916.*

To special agents and other officers of the customs:

Attention is invited to the provisions of articles 591 and 594 of the Customs Regulations of 1915, providing for reports from appraisers outside of New York to the appraiser at New York in regard to the valuation and classification of merchandise.

Special agents are instructed to keep in touch with the appraising officers in their respective districts and to confer with them as to the number and character of the reports that are being made or that should be made to the appraiser at New York.

Hereafter special agents will report directly to the appraiser at New York all information concerning undervaluations or changes in prices or market conditions which they receive from sources other than the appraiser's office, and at the same time furnish to the appraising officers in their respective districts a copy of the report.

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The information furnished to the appraiser at New York will be distributed by the C. V. R. Bureau to appraisers where such or similar merchandise is likely to be imported, and when a report shows evidence of fraudulent undervaluation a report will be sent by the C. V. R. Bureau to the agents in charge of districts in which such merchandise is imported.

Appraising officers will report to the C. V. R. Bureau all cases of fraudulent undervaluation discovered by them, and at the same time notify the special agent in charge of the district. Customs form 6431g, which will be furnished by the department, will be used for these reports, and the reverse side may be used if necessary. A duplicate copy should be made for the appraiser or the special agent by the use of carbon, the original to be sent to the appraiser at New York.

Special agents are instructed to confer with the appraiser at New York from time to time as to the methods and procedure in connection with C. V. R. cards, reports, and principles of appraisement.

Hereafter appraisers desiring an investigation by a special commissioner abroad will send the request to the appraiser at New York. If the information desired is not available in the C. V. R. Bureau the request will be forwarded by the appraiser at New York direct to the department.

At Pacific Coast ports when the case is urgent the appraiser may send the request direct to the special commissioner in Japan. He should send a copy of the request to the appraiser at New York, and when the report is received send a copy thereof to said appraiser for the information of the C. V. R. Bureau.

All communications should be addressed to the appraiser at New York, in care of the C. V. R. Bureau.

WM. P. MALBURN, *Assistant Secretary.*

(T. D. 36360—G. A. 7895.)

Quinine glycerophosphate.

Quinine glycerophosphate is properly classifiable as a salt of cinchona bark under paragraph 584 of the free list, act of 1913, rather than as a salt or compound of glycerophosphoric acid under paragraph 18.

United States General Appraisers, New York, April 26, 1916.

In the matter of protest 769181 of Merck & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Comstock & Washburn (*Henry J. Rode* of counsel), for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

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Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* The appraiser's report states that—

The merchandise described on the invoice as quinine glycerinophosphate consists of a compound of sulphate of quinine with glycerophosphoric acid, the sulphate of quinine consisting of 68 per cent of the compound.

Upon this return it was classified as a salt or compound of glycerophosphoric acid, which is specially provided for by that name in paragraph 18, act of 1913, for the first time. It is claimed to be free under paragraph 584, providing for "quinia, sulphate of, and all alkaloids or salts of cinchona bark."

The examiner testified as a pharmacist and stated on page 6 of the testimony:

I would call it a salt of cinchona bark. I would call it a salt of glycerophosphoric acid.

The United States Dispensatory (p. 1626) states, after giving its formula, that—

Quinine glycerophosphate forms a white powder, soluble in hot water and alcohol, which contains 68 per cent of quinine in combination with glycerophosphoric acid. This substance has been recommended as an antiperiodic in doses of five to ten grains. The tonic dose is set down as one and one-half to three grains.

In an earlier edition of the same work (eighteenth), at page 1139, it is described as being made by combining quinine with glycerophosphoric acid.

This substantially agrees with the examiner's testimony.

In United States *v.* Merck (168 Fed., 244; T. D. 29600) the Circuit Court of Appeals for the Second Circuit, in construing the same anguage in paragraph 647 of the act of 1897, held that—

Congress did not use the language of chemical science in paragraph 647. It provides for "salts of cinchona bark," and all the experts agree that there is no such thing. What it meant, undoubtedly, was that quinine (sulphate of quinia) and the other derivatives from cinchona bark which preserved the controlling or essential medicinal element of the bark should be admitted free of duty.

As this contains at least 68 per cent of quinine, it is apparent that its medicinal properties are largely derived from the quinine content. It therefore appears that quinine glycerophosphate is both a salt of quinine and a salt or compound of glycerophosphoric acid, having a definite chemical composition, medicinal in its qualities.

Thorpe's Dictionary of Applied Chemistry (vol. II, p. 773) says:

Glycerylphosphoric esters are obtained by heating phosphoric acid with glycerol. The most important ester commercially is monoglycerolphosphoric acid, which *forms a series of salts* (sodium, lithium, calcium, strontium, iron, etc.), largely used in pharmaceutical practice (especially in France). (Italics ours.)

It would seem that it was for the purpose of taxing the abovementioned salts of glycerophosphoric acid that Congress used that

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expression in paragraph 18 of the law of 1913, rather than for the purpose of limiting the scope of the quinine provision of the free list, or taking therefrom a quinine salt such as this, the other quinine salts remaining free of duty.

The protest is therefore sustained.

(T. D. 36361—G. A. 7896.)

Plastilina—Modeling clay.

Modeling clay, a material used by the sculptor, even if chemically compounded, is neither a scientific nor a commercial chemical within the meaning of paragraph 17, act of 1913, prescribing a minimum rate of duty for chemical compounds and combinations and similar articles, but is properly classifiable under paragraph 385 as an unenumerated manufactured article.—Abstract 36458 (T. D. 34763) cited.

United States General Appraisers, New York, April 26, 1916.

In the matter of protest 737501 of Strohmeyer & Arpe Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Strauss & Hedges (*Jacob L. Klingaman* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* The merchandise here consists of plastilina, a modeling clay. The collector, on advice of the appraiser, found it was chemically compounded, and as it was put up in individual packages of less than 2½ pounds gross weight, he classified it as a chemical combination or similar article at 20 per cent under paragraph 17, act of 1913. Paragraph 17 covers—

Chemical and medicinal compounds, combinations and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of two and one-half pounds or less gross weight * * *:

The protest makes a variety of claims, but in view of the decision upon this identical substance by Board 3 (opinion by Judge Hay) in Abstract 36458 (T. D. 34763), holding it dutiable as a nonenumerated manufactured article as against the classification under paragraph 81, act of 1913, as an earthy or mineral substance wholly or partially manufactured, only the claim under paragraph 385 as a nonenumerated manufactured article need be considered.

This decision was affirmed on appeal in United States *v.* Strohmeyer & Arpe Co. (6 Ct. Cust. Appls., 246; T. D. 35473), where Judge Barber, speaking for the court, said:

Paragraph 81 relates to earthy or mineral substances wholly or partially manufactured and articles and wares composed wholly or in chief value of such substances,

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while the merchandise before us is not an article or ware under that paragraph, but is composed of earthy or mineral substances and a substance which is neither earthy nor mineral, namely, saponifiable matter, the percentage of which seems to be some 31.12. It is also, we think, manufactured.

Upon this state of the law, the only issue raised here is whether, in view of the fact that it is imported in packages of less than 2½ pounds gross weight, it comes within the intent of Congress in enacting the minimum provision of paragraph 17 for chemical and medicinal compounds, combinations, and all similar articles, or whether it remains under paragraph 385 in spite of the size of the packages.

The main purpose of this clause in paragraph 17 was to encourage the importation in bulk of medicinal compounds and commercial or scientific chemicals and similar articles, and to encourage their repacking in smaller packages in the United States. But it would seem a misnomer to describe the article here involved, a modeling clay, as either a commercial or scientific chemical, its purpose and use not being a chemical one, but that of a material used in the profession of a sculptor. Therefore, in our opinion, it is clearly outside of the purpose of Congress in enacting the provision of said paragraph 17.

Even if this article could be held to be chemically compounded upon the facts as appearing from this record, in the view we take, that is not material.

In the case of Kimpton, Haupt & Co., Abstract 37926, decided June 17, 1915, we held that a chemical ink was not within the purpose of Congress in passing said paragraph 17, from which decision there was no appeal, stating therein:

It would seem a misnomer to call an ink a chemical compound, even if entirely composed of chemicals in a technical sense. Because you would then have one class of inks of a chemical make-up paying one rate of duty and another class, which is technically not chemical, paying another.

We also applied the same principle in the case of Bartley Bros. & Hall, Abstract 37932, decided June 17, 1915, covering plate powder, and in the following cases: Salomon & Phillips, Abstract 37931, June 17, 1915, polishing creams; Gerstendorfer Bros., Abstract 38225, August 5, 1915, colors and paints; Michaux, Aubry Co., Abstract 38346, September 3, 1915, blacking; Henry Bainbridge & Co., Abstract 38423, September 21, 1915, ink; Acker, Merrall & Condit Co., Abstract 38629, October 21, 1915, ultramarine blue; L. Reusche & Co. *et al.*, Abstract 38658, October 25, 1915, paints and colors; H. G. Ramsperger & Co., Abstract 38657, October 25, 1915, metal polish; H. Bainbridge *et al.*, Abstract 38680, October 27, 1915, ink; American Shipping Co., Abstract 38840, November 24, 1915, wash blue; F. L. Kraemer & Co. *et al.*, Abstract 39005, December 30, 1915, ink; James P. Smith & Co., Abstract 39266, February 16,

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1916, wash blue; American Shipping Co., Abstract 39283, February 25, 1916, wash blue; Favor, Ruhl & Co., Abstract 39354, March 8, 1916, linseed oil and varnish; Lamont, Corliss & Co., Abstract 39372, March 8, 1916, white cleaner.

We therefore hold the merchandise in question dutiable as an unenumerated manufactured article, at 15 per cent, under paragraph 385, as claimed.

Protest sustained.

(T. D. 36362—G. A. 7897.)

Embroidered articles in chief value of beads.

Dress trimmings or ornaments composed of a silk or cotton net or silk or cotton woven foundation, embroidered with beads or spangles—beads or spangles chief value—are not within paragraph 358, tariff act of 1913, because not in chief value of threads, yarns, or filaments. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464). Nor are they within paragraph 333, because embroidered. Such merchandise is dutiable according to the component material of chief value in the beads.

United States General Appraisers, New York, April 26, 1916.

In the matter of protest 791935 of Lichtenstein Millinery Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Brooks & Brooks for the importers.
Bert Hanson, Assistant Attorney General, for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* In this case the appraiser's report was incorporated by consent of counsel and the protest submitted. The report in question is as follows:

The merchandise consists of dress trimmings or ornaments composed of a silk or cotton net or silk or cotton woven foundation appliquéd or embroidered with beads or spangles, beads or spangles chief value. It was returned for duty as appliquéd or embroidered trimmings at 60 per cent ad valorem under paragraph 358, act of 1913. It is of the same character as the trimmings or ornaments subject of T. D. 35464, wherein the Court of Customs Appeals holds it not appliquéd and properly dutiable as beaded articles at 50 per cent ad valorem under paragraph 333, act of 1913. In the opinion of this office, the merchandise is in fact embroidered with either beads or spangles, and as this issue was not disposed of by the Court of Customs Appeals in T. D. 35464, it is held to be subject to duty as embroidered trimmings at 60 per cent ad valorem under paragraph 358, act of 1913.

Also millinery ornaments composed of metal and beads, metal chief value, valued over 20 cents per dozen, returned for duty at 60 per cent (par. 356).

Among others, the following claims appear in the protest: That the merchandise is dutiable as manufactures of metal not specially provided for, not plated with gold or silver, at 20 per cent ad valorem under paragraph 167; as manufactures of which gelatin is the com-

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ponent material of chief value, at 25 per cent ad valorem under paragraph 34; as articles not embroidered nor appliquéd, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, at 50 per cent ad valorem under paragraph 333; as manufactures of glass or paste or of which glass or paste is the component material of chief value, not specially provided for, at 30 per cent ad valorem under paragraph 95; or as a nonenumerated manufactured article at 15 per cent under paragraph 385.

This cause was submitted on January 3, 1916. On January 27 the board of its own motion ordered it restored to the docket for additional evidence, especially as to the component material of chief value. On March 6, 1916, the cause was again called for trial, but the protestants offered no additional evidence, and we must therefore pass upon it upon the scant record submitted.

We have no proof that the millinery ornaments last referred to by the appraiser are within paragraph 333, or any of the other paragraphs claimed in the protest; therefore this merchandise need not be considered.

As to the articles composed of silk or cotton net or silk or cotton woven foundation, alleged to be appliquéd or embroidered with beads and spangles, beads or spangles chief value, it is true as stated by the appraiser, that the Court of Customs Appeals in Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) did not pass on the question as to whether the merchandise covered thereby was or not embroidered, but the court in that case said:

> We are therefore driven to the interpretation adopted that the articles and fabrics within paragraph 358 must be in chief value of threads, yarns, or filaments, *of which these goods are not;* but that being in chief value of beads they fall for dutiable purposes within paragraph 333. (Italics ours.)

In this case the merchandise is admittedly in chief value of beads or spangles, and, not being in chief value of threads, yarns, or filaments, in view of that decision, is not within paragraph 358; but, although in chief value of beads or spangles, the fact that it is embroidered takes it out of paragraph 333. The question remains, therefore, Under what paragraph is it dutiable? It seems to us, beads or spangles being chief value, the merchandise is dutiable according to the component material of chief value in the beads or spangles; but we have no proof as to what is such component material of chief value, nor have we any sample of the merchandise. For aught we know to the contrary the beads or spangles in this merchandise are composed of metal, gelatin, glass, or paste, and so within any one of the claims in the protest claiming they are such.

The protest is therefore overruled for lack of proof, without, however, acquiescing in the collector's decision, which, in view of the Loewenthal case, *supra*, is erroneous.

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(T. D. 36363—G. A. 7898.)

Jacquard figured nettings.

UPHOLSTERY GOODS—NETTINGS CHIEFLY USED AS CURTAINS.

Jacquard figured cotton nets or nettings which are chiefly used for making window curtains are properly dutiable at the rate of 35 per cent ad valorem under the provision in paragraph 258, tariff act of 1913, for "Jacquard figured upholstery goods, composed wholly or in chief value of cotton," and not as "nets, nettings, * * * of whatever yarns, threads, or filaments composed."—Bing *v.* United States (3 Ct. Cust. Appls., 115; T. D. 32365); Carter *v.* United States (6 Ct. Cust. Appls., 253; T. D. 35475); United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 477; T. D. 36120) cited and followed.

United States General Appraisers, New York, April 28, 1916.

In the matter of protest 758026 of Mills & Gibb against the assessment of duty by the collector of customs at the port of New York

[Reversed.]

Curie, Smith & Maxwell (*Thomas M. Lane* of counsel) for the importers.

Burt Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* The merchandise in question consists of cotton nets or nettings in the piece. They are all Jacquard figured, and it is admitted that they are intended for use in making window curtains, and are chiefly so used. They were assessed for duty at the rate of 60 per cent ad valorem under the provision in paragraph 358, tariff act of 1913, for "nets, nettings, * * * of whatever yarns, threads, or filaments composed." The importers claim that the goods are dutiable at the rate of 35 per cent ad valorem under the provision in paragraph 258 of said act for "Jacquard figured upholstery goods, composed wholly or in chief value of cotton."

It has been held that the term "upholstery goods" has no commercial meaning different from the common meaning of the term, which has been defined as a "general term for all such interior decorations and fittings as are made with textiles." Bing *v.* United States (3 Ct. Cust. Appls., 115; T. D. 32365); Carter *v.* United States (6 Ct. Cust. Appls., 253; T. D. 35475); United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 477; T. D. 36120).

In the Carter case, *supra*, the goods were curtain nettings similar to those here in question. In that case the court said in part:

The question is therefore presented whether "Jacquard figured upholstery goods" is a designation which should prevail over the term "nets, nettings." We think it should. The intent appears to be manifest to make the use to which a narrowly prescribed class of goods is devoted the test of its classification. This makes the provision more narrow than the broad term "nets, nettings." In the first place, the articles provided for under this provision must be Jacquard figured; secondly, they must be upholstery; thirdly, they must be composed wholly or in chief value of cotton or other vegetable fiber, and "any of the foregoing in the piece or otherwise" is pro

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vided for. Obviously these provisions must have been intended to invade the other paragraphs of the tariff act and to remove or leave out of such paragraphs the goods answering to this particular and specific description. It describes the goods in the piece, and restricts them to upholstery goods composed wholly or in chief value of cotton, Jacquard figured. We think this provision, which restricts its operation to goods whose chief use is as upholstery goods, the precise and restricted character of such upholstery goods being exactly defined by the terms of the paragraph, brings within its provisions an article which might otherwise be appropriately termed nets or nettings.

In the case of United States *v.* Snow's United States Sample Express Co., *supra,* the goods consisted of madras muslin curtains and madras muslin curtain goods in the piece. The importers sought to prove in that case that the term "upholstery goods" had a restricted meaning in the trade which excluded such fabrics; while the Government, on the other hand, attempted to show a broader trade usage of the terms which would include such fabrics. The court held that there was a failure to show by the testimony of the importers that there was a commercial meaning different from the common meaning of the term "upholstery goods," and approved and applied the doctrine of the Carter case, *supra.*

In the case at bar the Government has called a large number of witnesses in an effort to meet the above-cited decisions by showing that the term "upholstery goods" has a commercial meaning which differs from the common meaning of the term, and that the commercial meaning excludes nets and nettings such as those here in question. In order to sustain that position it is necessary to show that the term "upholstery goods" has a definite, uniform, and general meaning in the trade other than the ordinary or dictionary meaning which the words convey.

In construing a tariff act, when it is claimed that the commercial use of a word or phrase in it differs from the ordinary signification of such word or phrase, in order that the former prevail over the latter it must appear that the commercial designation is the result of established usage in commerce and trade, and that at the date of the passage of the act that usage was definite, uniform, and general, and not partial, local, or personal. Maddock *v.* Magone (152 U. S., 368).

The testimony in this case is voluminous and hopelessly conflicting. Some 36 witnesses were examined, 20 having been called by the Government and 16 called by the importers. The testimony offered by the Government to sustain the alleged trade usage of the term is met by the importers with a large volume of contradictory testimony from witnesses of apparently equal intelligence, equal opportunities of learning trade usages and terms, and equal good faith. We do not think it necessary to cite the testimony, but we say of it what was said by the Court of Customs Appeals of the testimony in United States *v.* Snow's United States Sample Express Co., *supra:*

In the present case the testimony indicates that the term "upholstery goods" is not used in the trade in actual transactions of buying and selling. That is to say, a

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customer would not, in the ordinary course of trade, approach a seller with an inquiry for upholstery goods, but would inquire for tapestry, plush, etc., according to his needs. If there is such a classification, it is made by individual houses in the arrangement of their stock. Some houses maintain an upholstery department and a drapery department. In such houses the draperies for windows or doors would be found in the drapery department, and this would seem to have led some of the witnesses to conclude that draperies are not in any case upholstery, while others conclude that they may be classed as upholstery if of a quality and weight making them suitable for upholstering furniture. Other witnesses state that the use to which the material is put is the determining feature. If this be the test, the preponderance of the testimony shows that draperies for doors and windows are regarded as upholstery.

And again:

True, some of the importers' witnesses draw a distinction between light-weight draperies, such as are here in question, and heavier draperies. This attempted distinction, however, we think results from a confusion in the minds of the witnesses and an attempt to get back to the idea that the term "upholstery" should be restricted to such heavy goods as are *suitable for coverings* and adopting in their own minds a definition which would exclude draperies *as such*, but include draperies when made from goods known as upholstery goods because of their adaptability to use as coverings of furniture.

There is such hopeless confusion and irreconcilable differences between the witnesses as to make it impossible to find that the term "upholstery goods" has a definite, uniform, and general meaning throughout the trade. The case, therefore, stands upon the ordinary meaning of the words "upholstery goods," and the Court of Customs Appeals having already determined the meaning attached to that term as including goods like those in this importation, it follows that the claim in the protest that these goods are dutiable as upholstery goods must be and it is sustained.

A claim is made in the protest that a discount of 5 per cent on the duties imposed should be allowed under subsection 7 of paragraph J of section 4, tariff act of 1913. That claim, however, has been waived by counsel for the importers, and is accordingly overruled.

(T. D. 36364—G. A. 7899.)

Oxide of antimony.

As interpreted by the United States Court of Customs Appeals in United States *v.* Innis, Speiden & Co. (7 Ct. Cust. Appls., —; T. D. 36254), the provision in paragraph 144 of the act of 1913 for "antimony oxide, salts, and compounds of," should be read as though it were written "salts and compounds of antimony oxide." As the present merchandise is neither a salt nor a compound of antimony oxide, but is in fact antimony oxide itself, it is not included within the terms of said provision; and, being a chemical compound, but not specially provided for, it is accordingly relegated for classification to the general provision for chemical compounds in paragraph 5 of said act.

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United States General Appraisers, New York, April 28, 1916.

In the matter of protest 779340 of Fuerst Bros. & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Strauss & Hedges (*Allan R. Brown* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* This protest is before us on a stipulation entered into by and between the Assistant Attorney General and counsel for the importers wherein it was agreed that the following report of the appraiser may be considered as part of the record, but with the understanding that neither side should be bound by any statement of law or conclusion of law expressed in said report.

The merchandise in question consists of oxide of antimony, shown by the United States chemist's report covering entry 255487 to contain 62.60 per cent of antimony. It was returned under the last part of paragraph 144, act of 1913, wherein antimony oxide is provided for *eo nomine* at 25 per cent ad valorem. Note G. A. 7688 (T. D. 35142), wherein it is said, "it is not disputed that 'antimony oxide' is provided for *eo nomine* as the main subject in the last part of said paragraph."

The importers claim that the merchandise is properly dutiable at the rate of 15 per cent ad valorem under paragraph 5 as a chemical compound.

The material portion of paragraph 144 reads as follows:

144. * * * Antimony oxide, salts, and compounds of, 25 per centum ad valorem.

The Government contends that this provision should be interpreted as if it read "antimony oxide and salts and compounds thereof," whereas the importers insist that the United States Court of Customs Appeals, in the case of United States *v.* Innis, Speiden & Co. (7 Ct. Cust. Appls.,—; T. D. 36254), has judicially defined the scope of said provision as covering only the salts and compounds of antimony oxide, and not in addition antimony oxide itself.

We incline toward the latter view, which we think is fully supported by the language of the decision in the case just cited, wherein the court undertook to construe the meaning of the provision there and here under consideration. The court said:

The contention on behalf of Government is that the last clause of the paragraph should be read as though the comma preceded the word "oxide," and reliance is placed upon the rule that the grammatical construction of a sentence will at times give way to obvious intent. But we apprehend that before this rule can be invoked it must be apparent that the language as written is either inoperative or in conflict with other provisions, indicating a congressional intent at variance with the terms of the chosen phrase. Neither condition is here present. The Government admits that there are such things in existence as salts and compounds of antimony oxide,

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and attention is not directed to any other enacted provision which detracts from the force of the language employed. This language is plain and unambiguous. Salts and compounds are provided for. When we ask what salts and compounds, we find these terms are restricted by the word "of," which obviously refers back to antimony oxide. The clause has the identical meaning which it would bear if it had read "salts and compounds of antimony oxide."

The language of the statute being plain and unambiguous, we are not warranted in disregarding its terms or in entering the field of speculation with a view to ascertaining an unexpressed intent or in ascribing to the language employed a meaning other than that which the plain terms import.

As we read the language of said decision, it means that the words "antimony oxide" are used in the provision merely as the subject complement of the nouns "salts" and "compounds" and that they were not intended to be given any additional and independent force and effect.

Inasmuch, therefore, as the present merchandise is neither a salt nor a compound of antimony oxide, but is in fact antimony oxide itself, we follow the above-cited decision of the court and hold it to be excluded from the provisions of paragraph 144, under which it was classified by the collector. And being a chemical compound, but not specially provided for, it is accordingly relegated for classification to the general provision in paragraph 5 of said act for "all chemical * * * compounds, * * * not specially provided for," and dutiable thereunder at the rate of 15 per cent ad valorem, as alleged by the importers. That claim in the protest is therefore sustained and the decision of the collector is modified accordingly.

(T. D. 36365— G. A. 7900.)

Repair parts for steam engines for plows.

Certain repair parts for two steam engines, the latter used exclusively for operating plows, are properly dutiable under paragraph 167, act of 1913, as manufactures of metal not specially provided for, as classified by the collector, rather than entitled to free entry under the provision in paragraph 391 of said act for "plows, * * * and all other agricultural implements of any kind and description, * * * whether in whole or in parts, including repair parts," as claimed by the importers.

United States General Appraisers, New York, April 28, 1916.

In the matter of protest 787577 of A. Hartmann & Co. against the assessment of duty by the collector of customs at the port of San Juan.

[Affirmed.]

Jules Chopak, jr., for the importers.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The articles in question consist of safety valves, rods, bushes, bolts, nuts, and other repair parts for

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steam engines. There being no tariff provision for parts of steam engines, duty was levied upon said articles at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for. The contention of the importers is that, inasmuch as the particular engines for which these parts are intended are exclusively employed to furnish steam power for the operation of plows, such parts are entitled to free entry under the provision in paragraph 391 of said act for "plows, * * * and all other agricultural implements of any kind and description, * * * whether in whole or in parts, including repair parts," on the theory that the steam engines are parts of the agricultural implements which they operate.

The case is submitted for decision upon the deposition of H. A. McCormick, a member of the importing firm, taken by commission. Asked, in the sixth direct interrogatory to "state in detail to what uses said plows are put," this witness replied:

> These repair parts were for a Fowler steam plow, which was and is used exclusively for plowing the lands of properties belonging to the firm of A. Hartmann & Co.

However, that the steam engines referred to are neither incorporated in nor in the remotest sense connected with nor embodied in the mechanism of the plow, but are rather separate, distinct, and complete articles in themselves independent of the plow which they operate, is made clear by the answer of the witness to the ninth cross-interrogatory, in which, referring to the specific parts under consideration, he said:

> They are used on two steam engines which are used exclusively for hauling a plow, a knife, and a harrow.

Inasmuch as paragraph 391 deals solely with agricultural implements and parts thereof, mentioning several of them by name, we are at a complete loss to understand how or under what circumstances steam engines may also be said to be classifiable thereunder. Manifestly, the very term "agricultural implement" contemplates something which is used in cultivating the soil for the purpose of raising crops for man's food or raiment. As observed by the court in the case of United States *v.* Boker (6 Ct. Cust. Appls., 243; T. D. 35472), "there is no implement enumerated within the paragraph that is not devoted to the production of food or raiment for man, and there is none so enumerated that is employed in his other pursuits."

Obviously, a steam engine, the functions of which are employed solely for generating steam power, can in no sense be considered an agricultural implement. To hold that such an engine, simply because its power happens to be used to work or haul a plow, becomes *ipso facto* a plow or an integral part of the plow would be just as ridiculous and absurd as to say that a horse used for the same purpose may properly be considered as part of a plow and classifiable accordingly.

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Again, to hold as meritorious the contention that a steam engine which operates a plow is entitled to the same classification as the plow would, in effect if not in substance, mean that any other power-driving mechanism or device—notwithstanding it may be fully complete in every detail and a separate and distinct article from the one for which it furnishes the motive power—should, for tariff purposes at least, be treated as though it were actually incorporated in and formed part of the internal mechanism of the machine which its power operated. In other words, that in construing an *eo nomine* designation for, say, sewing machines, embroidery machines, machine tools, printing presses, or any of the innumerable machines employed in the different trade industries, where such designations were followed by a provision for the respective parts of such articles, it would be necessary to classify within the meaning of the term "parts" articles which were in themselves complete and independent entities in the form of power-driving engines and machines. A mere recital of any such proposition is sufficient to show the utter absurdity of it.

Moreover, the provision in paragraph 391, invoked by the importers herein, is altogether too plain and definite in its terms to admit of the slightest ambiguity. It is absolutely restricted to agricultural implements whether in whole or in parts, including repair parts. Now, a steam engine is fully as complete an article as is the plow which it hauls. Each of them has its own separate designation and identity, just as each performs work and possesses functions which are entirely foreign to the other. Hence, it would be no more proper to say that the steam engine is a part of the plow which it hauls than it would be to hold that the plow is a part of a steam engine. Where there are two complete articles, each of which performs work of an entirely separate and distinct nature from the other, it is indeed difficult to understand how one can be said to be part of the other.

Paragraph 165 contains a provision for "all steam engines." What would become of the effect of such provision if steam engines were to be classified for tariff purposes not as steam engines, but as parts of the various mechanical contrivances for which they supply the motive power? Is it not rather significant that Congress saw fit to make special provision for steam engines, although it is well known that they are always employed to supply power for the operation of some other machine or mechanical device?

In passing upon engines similar to those for which the repair parts herein are intended, this board held them not to be classifiable as plows, in the matter of protest 51314B of Lilienthal & Co. In his decision in that case, G. A. 5165 (T. D. 23818), Judge Somerville said:

We are clearly of the opinion that steam-plow machinery, consisting of engines with the necessary tackle and accompaniments which constitute the power by which

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the plow is operated, was not intended by Congress to fall within the purview of the above paragraph. The mere fact of calling the entire importation a steam plow or set of steam plows would not make it a plow for tariff purposes, inasmuch as it is not a plow within the ordinary meaning of that word. This view is rendered perfectly clear by the tariff act of June 6, 1872. * * * The following proviso (p. 237) is attached to section 7 of said act, namely, that—

For the term of two years from and after the passage of this act, and no longer, *steam-plow machinery* adapted to the cultivation of the soil may be imported by any person for his own use, free of duty, subject to such regulations of the Secretary of the Treasury as before provided.

This act expired on June 6, 1874, and has never since been in force. It evidently contemplates "steam-plow machinery," which term accurately describes the engine and apparatus included in the present importation as something distinctly different from the implements which the engines are designed to operate.

The decisions in the cases of United States *v.* American Express Co. (6 Ct. Cust. Appls., 494; T. D. 36124) and United States *v.* Tower (6 Ct. Cust. Appls., 562; T. D. 36199), cited by counsel for the importers, are not relevant to the present issue.

The protest is overruled and the decision of the collector affirmed.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

Before Board 1, April 24, 1916.

No. 39610.—Protest 799393 of Gulf Export & Transportation Co. (Port Arthur).

Cedar Logs.—Cedar logs sawed on one or two sides for facilitating shipment and not to secure uniformity in dimensions, classified as sawed cedar at 10 per cent ad valorem under paragraph 169, tariff act of 1913, are claimed entitled to free entry as rough cedar hewn only, under paragraph 648.

Opinion by McClelland, G. A. From the report of the appraising officer the merchandise in question was held free of duty as cedar in the log, rough, or hewn only, under paragraph 648, as claimed.

No. 39611.—Protest 791949 of Lehn & Fink (New York).

Aromatic Substance.—This protest is against the classification of certain merchandise as a natural aromatic substance at 20 per cent ad valorem under paragraph 49, tariff act of 1913.

Opinion by McClelland, G. A. Protest unsupported; overruled.

No. 39612.—Protest 798212-6581 of Albert Hurt & Co. (New Orleans).

Wood Sticks.—The collector reports that the merchandise consists of small cherry sticks about three-eighths of 1 inch in diameter, cut in lengths of about 10½ inches, intended for use in the manufacture of pipe stems or mouthpieces. It was classified as a manufacture of wood at 15 per cent ad valorem under paragraph 176, tariff act of 1913, and is claimed free of duty as wood sticks under paragraph 648.

Opinion by McClelland, G. A. The official sample consists of a round piece of wood with the bark on it—simply a rough stick cut from a tree. It was held free

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of duty under paragraph 648, as claimed. United States v. Larzelere (6 Ct. Cust. Appls., 273; T. D. 35502) and United States v. Steeb (6 Ct. Cust. Appls., 275; T. D. 35503) followed.

No. 39613.—Protest 796102–58291 of A. H. Raymond (Chicago).

LEATHER BELT.—Merchandise invoiced as secondhand belting, classified as manufactures of leather at 30 per cent ad valorem under paragraph 360, tariff act of 1913, is claimed entitled to free entry as leather not specially provided for under paragraph 530.

Opinion by McCLELLAND, G. A. From the evidence the article was found to be a long piece of leather, such as would be used for belting. It was held properly classified under paragraph 360. Abstract 27739 (T. D. 32274), Abstract 36959 (T. D. 34969), and United States v. Kundtz (6 Ct. Cust. Appls., 501; T. D. 36126) cited.

No. 39614.—Protest 787382 of Bourret-Kirkwood Co. (Seattle).

LEATHER BELT.—A piece of leather 100 feet long and 2½ inches wide, made by riveting or splicing together short pieces of leather, ready for use as a belt, with the exception of joining the ends together, classified as manufactures of leather at 30 per cent ad valorem under paragraph 360, tariff act of 1913, is claimed free of duty under paragraph 530.

Opinion by McCLELLAND, G. A. Protest overruled. Abstract 27739 (T. D. 32274), Abstract 36959 (T. D. 34969), and United States v. Kundtz (6 Ct. Cust. Appls., 501; T. D. 36126) cited.

No. 39615.—Protest 786964 of Charles Zinn & Co. (Boston).

BASKETS.—Baskets of cane, willow, raffia, and wood, lined with cotton back silk, classified as manufactures of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed dutiable under paragraph 175 or 176.

Opinion by McCLELLAND, G. A. The weight of the testimony offered was found against the claim of the protestants. Protest overruled.

BEFORE BOARD 2, APRIL 24, 1916.

No. 39616.—Protests 770110, etc., of F. A. Koch & Co. (New York).

FORCEPS, SURGICAL—NEEDLE HOLDERS.—Surgical forceps, needle holders, etc., returned by the appraiser as instruments with two lever handles working on a pivot with cutting, gripping, or pinching jaws, classified as nippers and pliers at 30 per cent ad valorem under paragraph 166, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. The instruments in question were found to be similar to the merchandise held by the court in Koch v. United States (6 Ct. Cust. Appls., 534; T. D. 36148) to be dutiable under paragraph 167. Protests sustained.

No. 39617.—Protest 768438 of Guy B. Barham (Los Angeles).

BASS FIBER, DRESSED.—Bass fiber, dressed, classified as istle or Tampico fiber by similitude, at 20 per cent ad valorem under paragraph 285, tariff act of 1913, is claimed dutiable as a nonenumerated manufactured article under paragraph 385.

Opinion by COOPER, G. A. Upon stipulation of counsel the fiber in question was held dutiable at 15 per cent under paragraph 385. Cone v. United States (6 Ct. Cust. Appls., 263; T. D. 35477) followed.

BEFORE BOARD 3, APRIL 24, 1916.

No. 39618.—Protests 799799, etc., of F. B. Vandegrift & Co. et al. (New York).

ORCHIDS.

WAITE, *General Appraiser:* The merchandise imported in these cases is described as orchids or wild orchid plants. The protests have been submitted on the record in a previous case under stipulation. The case in which the record was made is Mal-

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tus & Ware *v.* United States, suit 1546, decided by the board (G. A. 7675; T. D. 35103) and afterwards by the Court of Customs Appeals (6 Ct. Cust. Appls., 376; T. D. 35920). The claim in that case, as in this, was that the orchids were free of duty under the proviso to paragraph 210, which reads:

210. * * * *Provided*, That all mature mother flowering bulbs imported exclusively for propagating purposes shall be admitted free of duty.

They were assessed for duty under the first part of the same paragraph at 25 per cent ad valorem, where "orchids" are specifically provided for.

The court, in the case above referred to, reversing the board, held that the orchids were mature mother flowering bulbs imported exclusively for propagating purposes. The collector reports that he did not follow the court's decision in his classification because the importers failed to prove by affidavit that the plants were imported exclusively for propagating purposes. The court held in Maltus & Ware *v.* United States, *supra*, that the goods were commercially known as bulbs. The proof indicated that they are a pseudo bulb; that the only part of the plant which could be characterized as a bulb, or which gave rise to the appellation, was the enlarged stem upon which the flower is borne and from which no further growth is obtained, either flower or plant, its function being completed when it bears the flower. Propagation in connection with this plant consists in the extension of the root stems from which the sprout springs which bears the flower. The flower does not spring from a bulb in the begninning, but the bulb, so-called, and flower shoot start as one from the horizontal root stem and grow like the sprout of any other annual, bearing the flower on its top. Whatever propagation is obtained with reference to the sprout which bears the flower and develops finally into the pseudo bulb is simultaneous with the growth which produces the flower, differing in this regard, as will be seen, from the growth and propagation of a true bulb. The record is not very clear upon this point, but we think we are warranted in assuming that these plants are brought in to sell to those who desire to raise flowers. The plants are increased by an extension of the root stalk from which springs the so-called bulb, and not by any extension or further growth of the so-called bulb. When such stalk or bulb has once developed, whether it bear a flower or not, it perishes. We learn from the testimony found in the record upon which this case is submitted that "a flowering bulb is a new shoot that produces a flower direct." The witness further says: "These bulbs are not flowering bulbs. They have flowered. Flowered orchid bulbs are never imported from South America that I know of." Another witness says, "We do not bring in any bulb that is ready to flower."

If this testimony is to be taken as true, the merchandise in question here can hardly be classed under the proviso to paragraph 210, which provides for "flowering bulbs."

There is no way that we are aware of whereby it can be determined whether these plants are imported exclusively for propagating purposes except from their subsequent treatment and the testimony of the importers. They may very well be imported for both flowering and propagating purposes at the same time, and proof that they were imported for propagating purposes would not negative the fact that they were imported for flowers. Hence we conclude that there should be specific and definite proof in the language of the statute that they are "imported exclusively for propagating purposes," else they are not admissible into the country free of duty. The word "exclusively" must have some meaning. If the meaning above indicated is not to be given to it, then it may as well have been left out of the statute and the goods admitted free if they are brought in for propagating purposes, notwithstanding the fact that they may at the same time have been imported for other purposes. This point seems not to have been raised in the case which went to the court. The board having held that they were not bulbs, it was not necessary to raise the point. As the record does not show they were imported *exclusively* for propagating purposes, we conclude that the finding of the court upon this point is not conclusive, the assumption that they were imported for

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propagating purposes having doubtless been made by all parties concerned. We are therefore of the opinion that the record which has been stipulated to be the record in this case does not show, as required by the statute, that these orchids or orchid plants were imported exclusively for propagating purposes. The protests are therefore overruled.

No. 39619.—Protest 728471 of Wm. A. Brown & Co. (New York).

GERMAN COCHIN OIL—COCOANUT OIL.

WAITE, *General Appraiser:* The commodity in question in this case is invoiced as "26 casks German cochin oil." It is conceded by all to be what is known as cocoanut oil. It was assessed for duty under paragraph 293, tariff act of 1909, which reads as follows:

293. Cocoa butter or cocoa butterine, refined deodorized cocoanut oil, and all substitutes for cocoa butter, three and one-half cents per pound.

Protestant claims it is free of duty under paragraph 639 of the same act, which provides for cocoanut oil, not refined or deodorized.

The testimony on the part of the importers is that it is cocoanut oil such as they have been importing for several years and which has been sold to soap makers and refiners of cocoanut oil, and that it has never, previous to this time, been considered or assessed as refined cocoanut oil. There was put in evidence an analysis made by the chemist of the United States laboratory, who was also upon the stand. From his testimony it appears that this oil contains 1.60 per cent of free fatty acid. The testimony on the part of the importers shows that what was known as refined cocoanut oil at the time of this importation did not contain as much acid as is shown in this report. The chemist stated that he reported this to be refined cocoanut oil purely on the ground that he could not detect any odor. He says his judgment was based on the fact that he could not understand how it could be unrefined and be free from odor. There is testimony on the part of the importers showing that it smelled like cocoanut, in other words, that it had the cocoanut odor. The chemist would not say, however, that it would be considered refined having the amount of free fatty acid reported by him. His language was:

I do not see how a cocoanut oil could be free from odor and be crude, and for that reason I reported this oil as being refined.

The evidence leads us to believe that the question whether it has been refined depends on the absence of free fatty acid and the absence of odor. On the part of the importers it appears that there is sufficient free fatty acid to show that it is not refined, and that also there is odor, which is admitted by all to be evidence that it has not been refined. On the part of the Government we have the testimony alone of the Government chemist that he detected no odor. We are of the opinion that the testimony of the importers predominates as to the question of refinement. We therefore hold that the commodity in this case had not been refined, sustaining the protest.

No. 39620.—Protest 784959 of Kraus & Co. (Pittsburgh).

WINE—PERCENTAGE OF ALCOHOL.—It is claimed here that a case of claret wine contained less than 14 per cent of alcohol. It was classified at 60 cents per gallon and is claimed dutiable at 45 cents under paragraph 244, tariff act of 1913.

Opinion by WAITE, G. A. The wine in question was held dutiable at 45 cents per gallon under paragraph 244, as claimed.

No. 39621.—Protest 789787 of Toledo Seed & Oil Co. (New York).

DIRT IN LINSEED.—It is alleged in this protest that certain waste in linseed was classified under paragraph 212, tariff act of 1913. It is claimed dutiable at 10 per cent under paragraph 385.

Opinion by HAY, G. A. From the record it appears that the merchandise was classified as claimed by the protestants. Protest overruled.

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No. 39622.—Protest 789071 of Musolino & Berger (Boston).

PRO FORMA INVOICE—ADDITIONAL DUTY.—It is claimed in this case that additional duty should not have been assessed upon certain merchandise entered upon a pro forma invoice, the value of which upon appraisement was found greater than the entered value.

Opinion by HAY, G. A. The collector's action appearing to be in strict accord with the statute, the protest was overruled.

No. 39623.—Protest 783353 of C. J. Tower (Buffalo).

FURNACE WASTE—MINERAL SUBSTANCES.—Merchandise invoiced as furnace waste and classified as an earthy or mineral substance under paragraph 81, tariff act of 1913, is claimed free of duty as coke under paragraph 451 as sand under paragraph 614 or dutiable as waste at 10 per cent under paragraph 384.

Opinion by HAY, G. A. From the evidence it was found that the commodity is waste. It was held dutiable at 10 per cent under paragraph 384, as claimed.

No. 39624.—Protest 790071 of Simon Bros. (San Francisco).

EARTHENWARE, PRINTED.—Earthenware syphon closets printed with the name and address of the importer or consignee, and also the badge "Veribest," classified as printed earthenware at 40 per cent ad valorem under paragraph 79, tariff act of 1913, are claimed not printed, dutiable at 35 per cent under the same paragraph.

Opinion by HAY, G. A. On the authority of Richard *v.* United States (3 Ct. Cust. Appls., 193; T. D. 32469), affirming Abstract 26244 (T. D. 31804), the merchandise was held properly classified as printed earthenware under paragraph 79.

No. 39625.—Protest 790511 of H. Bayersdorfer & Co. (Philadelphia).

EARTHENWARE VASES.—Vases of various shapes, painted dark green, some plain, thers with incised scroll work, classified as decorated earthenware under paragraph 79, tariff act of 1913, are claimed dutiable as common yellow, brown, or gray earthenware made of natural unwashed and unmixed clay under paragraph 78.

Opinion by HAY, G. A. It was found that the vases are common yellow, brown, or gray earthenware, but it was not shown that they are made of natural unwashed or unmixed clay. Protest overruled. Abstract 39018 cited.

No. 39626.—Protest 791657-6317 of Texas & Pacific Railway Co. (New Orleans).

LEAKAGE OF WINE.—It is claimed in this case that an allowance should have been made for 40 gallons of wine which did not arrive.

Opinion by HAY, G. A. From the evidence it is not clear that the affidavit required by paragraph 244, tariff act of 1913, was filed within the five-day limit. Protest overruled.

No. 39627.—Protest 794349 of American Shipping Co. (New York).

CIGARETTE BOXES—SMOKERS' ARTICLES.—Lithographed tin boxes about 6 inches square and 1 inch deep with hinged tops, used as containers for cigarettes, imported empty, were classified as smokers' articles under paragraph 381, tariff act of 1913. They are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by HAY, G. A. On the authority of Abstract 26494 (T. D. 31851) the boxes in question were held properly classified as smokers' articles under paragraph 381.

BEFORE BOARD 1, APRIL 26, 1916.

No. 39628.—Protest 739549 of A. L. Garford (Cleveland).

FURNITURE—COMPONENT OF CHIEF VALUE.—Merchandise classified as furniture, down chief value, at 40 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable, among other things, as furniture of wood at 15 per cent under paragraph 176.

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McCLELLAND, *General Appraiser:* * * * The testimony is brief and unsatisfactory as a basis upon which to found an adjudication of the issue raised by the protest. The only witness called to testify was the examiner whose duty it was to examine the merchandise in question, appraise the same, and make advisory classification thereof. According to his statement, before passing judgment on the merchandise he called up on the telephone "probably the oldest furniture dealer in this town and asked him to send down a man familiar with upholstery." In response to this request a man was sent whom the witness says told him that feathers was the component of chief value in the furniture. This man was not called to testify, and it appears from the examiner's statement that he had "left town." The witness further says that the opinion thus obtained as to feathers being the component of chief value was at variance with his own judgment, it being his view that the furniture was in chief value of damask. Nevertheless, return was made upon the invoice that down was chief value, and duty was assessed accordingly. It is not made to appear whether the collector's assessment followed *ipso facto* the examiner's return, but we think it must be assumed that, inasmuch as it is the collector's official act in assessing duty which is under review, that officer exercised independent judgment, and therefore that expression of judgment must be presumed to be correct until the contrary is shown. The burden rested with protestant and there was no effort to meet it, either by calling the collector to prove by him the basis of his action or otherwise.

Under the circumstances the protest must be overruled.

No. 39629.—Protest 796705–58537 of John O. Notari & Co. (Chicago).

RUSCUS LEAVES.—Ruscus leaves described by the appraiser as ornamental leaves chemically bleached, classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable under paragraph 385, or free of duty under paragraph 552.

Opinion by McCLELLAND, G. A. On the authority of Abstract 39274 the leaves in question were held dutiable at 15 per cent under paragraph 385.

No. 39630.—Protests 766598, etc., of Wm. Larzelere & Co. (Philadelphia).

BORO-CARBONE—ARTIFICIAL ABRASIVE—EMERY GRAINS.—Merchandise invoiced as boro-carbone and classified as emery grains at 1 cent per pound under paragraph 343, tariff act of 1913, is claimed free of duty as a crude artificial abrasive under paragraph 479.

Opinion by McCLELLAND, G. A. The merchandise was held properly classified under paragraph 343. G. A. 7723 (T. D. 35383) followed.

No. 39631.—Protests 763447, etc., of St. Louis Car Co. et al. (St. Louis and New York).

RATTAN REEDS—CHAIR CANE.—Merchandise invoiced as rattan reeds, returned by the appraiser as chair cane, and classified at 10 per cent ad valorem under paragraph 212, tariff act of 1909, or paragraph 173, tariff act of 1913, is claimed entitled to free entry as rattan reeds.

Opinion by McCLELLAND, G. A. On the authority of Abstract 37694 relating to chair cane, the merchandise in question was held properly classified under paragraph 212, tariff act of 1909, or paragraph 173, tariff act of 1913.

No. 39632.—Protest 744919 of Innis, Speiden & Co. (New York).

MONTAN WAX.—Montan wax classified as an acid not specially provided for at 15 per cent ad valorem under paragraph 1, tariff act of 1913, is claimed free of duty under paragraph 561 or 641.

McCLELLAND, *General Appraiser:* * * * Montan wax has been several times passed upon by the board and on each occasion held to be free. It is evident from the record that the Government in this case sought to differentiate this wax from the

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montan wax heretofore passed on, in that it contains a larger percentage of free fatty acid than scientifically montan wax is credited with containing.

It appears from the testimony in the case that there are two kinds of montan wax known commercially; one is the black, or what might be said to be the original result of the distillation of bituminous coal, and the other is the yellow, derived from the black by certain processes of bleaching. The official chemist in the appraiser's laboratory who analyzed a sample of the merchandise in question expressed the view that, because of the large percentage of free fatty acid found in it, it was not montan wax, but the evidence that it is known commercially as such and generally bought and sold under that name is uncontroverted.

The claim for free entry under paragraph 641 is therefore sustained. (See Abstracts 1290, 19431, 20887, 36460, and 38932.)

Decision of the collector reversed.

BEFORE BOARD 2, APRIL 26, 1916.

No. 39633.—Protest 751750 of K. Takayama (New York).

SILK SCARFS, FRINGED—PROTEST FEE.—On the authority of G. A. 7641 (T. D. 34927) this protest was held valid, the fee having been paid on another protest against the same entry. Silk scarfs with fringes on the edge, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as silk wearing apparel at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. The fringes in question being used for the purpose of ornamenting and trimming the scarfs were found to fall within that class of articles known by the generic name "trimmings." On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the scarfs in question were held dutiable as silk wearing apparel under paragraph 317, as claimed.

No. 39634.—Protests 756666, etc., of Henry S. Beach (San Francisco and El Paso).

HAND-PAINTED DOILIES—MANUFACTURES OF SILK.—Table sets classified as manufactures of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed to be hand painted and dutiable at 15 per cent under paragraph 376.

Opinion by HOWELL, G. A. Each set consists of 12 small doilies and 1 large one. They are made of thin silk gauze with a hand-painted floral design which looks as though it might have been produced in part by stenciling. From an examination of the samples it was found that the articles do not rise to the dignity of a work of art. Under the construction placed upon paragraph 376 in G. A. 7643 (T. D. 34929), the protests were overruled.

No. 39635.—Protests 780128–6010, etc., of May & Ellis Co. (New Orleans).

LACES—VEILINGS.—These protests are against the classification of laces and veilings at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. Protests unsupported; overruled.

No. 39636.—Protest 788130 of Hallett & Chard (New York).

UMBRELLA FABRICS.—Woven fabrics of silk and cotton, classified as silk chief value at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed dutiable as cotton chief value at 30 per cent under paragraph 254.

Opinion by HOWELL, G. A. On the authority of Abstract 38969 relating to similar merchandise, the umbrella fabrics in question were found to be composed in chief value of cotton and held dutiable under paragraph 254, as claimed.

No. 39637.—Protest 785613–57306 of Gage Bros. & Co. (Chicago).

BEADED TRIMMINGS.—Trimmings described by the appraiser as "beads appliquéd on net," classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913,

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are claimed dutiable as articles composed in chief value of beads at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. The articles in question were found composed in chief value of beads and held dutiable at 50 per cent under paragraph 333, as claimed. Willenborg *v.* United States (6 Ct. Cust. Appls.. 209; T. D. 35464) followed.

No. 39638.—Protest 784449 of Snow's United States Sample Express Co. (New York).

WEARING APPAREL IN PART OF BRAID.—Articles of wearing apparel made in part of braids, trimmings, or ornaments, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 317 or at 35 per cent under paragraph 291.

Opinion by HOWELL, G. A. On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the wearing apparel composed in chief value of wool was held dutiable under paragraph 291, and the silk wearing apparel was held dutiable under paragraph 317. as claimed.

No. 39639.—Protest 774743 of G. A. & E. Meyer (New York).

WEARING APPAREL IN PART OF ORNAMENTS OR NETTING.—Merchandise classified at 60 per cent ad valorem as silk wearing apparel made in part of ornaments and nettings under paragraph 358, tariff act of 1913, is claimed dutiable at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. The articles in question were held properly dutiable as silk wearing apparel under paragraph 317. United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), and G. A. 7597 (T. D. 34755) followed.

No. 39640.—Protest 776178 of Wilfred Schade Forwarding Co. (St. Louis).

BEADED TRIMMINGS AND ORNAMENTS.—Certain trimmings and ornaments classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as composed in chief value of beads or spangles at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) the articles in question were found to be trimmings and ornaments composed in chief value of beads and spangles and held dutiable under paragraph 333.

No. 39641.—Protests 772574, etc., of Rice Stix Dry Goods Co. et al. (St. Louis and Los Angeles).

LACES—NETTINGS—EMBROIDERIES.—These protests are against the classification of certain laces, nettings, embroideries, and other articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. Protests unsupported; overruled.

No. 39642.—Protest 771113 of Calhoun, Robbins & Co. (New York).

ELASTIC BRAIDS.—Goods invoiced as white cotton elastic braids, classified under the provision for "braids, loom woven and ornamented in the process of weaving." at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed more specifically provided for under paragraph 262 as "fabrics with fast edges * * * made of cotton or other vegetable fiber and india rubber" at 25 per cent.

Opinion by HOWELL. G. A. The eo nomine provision for braid in paragraph 358 was held to control over the less specific provision in paragraph 262. Protest overruled.

No. 39643.—Protest 758300 of Hunken, Neale & Forbes (New York).

TRIMMED HATS.—The goods in question are trimmed hats which were returned by the appraiser as lace trimmed or embroidered silk wearing apparel at 60 per cent ad valorem under paragraph 358.

Opinion by HOWELL, G. A. The protest was submitted without evidence. No error appearing in the decision of the collector, the protest was overruled.

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No. 39644.—Protest 751843 of American Bead Co. (New York).

BEADED ARTICLES.—On the authority of G. A. 7641 (T. D. 34927), relating to protest fees, the protest was held valid. Hair bands and hair ornaments composed of cotton netting ornamented with beads, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. The beads were found to be chief value in the articles in question and they were held dutiable under paragraph 333, as claimed. Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

BEFORE BOARD 3, APRIL 26, 1916.

No. 39645.—Protests 781317, etc., of Baltimore & Ohio Railroad Co. et al. (Baltimore, etc.), and protests 797354-58426, etc., of American Shipping Co. et al. (Chicago).

TEA COVERINGS.—These protests are against the assessment of duty on tea coverings.

Opinions by HAY, G. A. The capacity of the packages of tea in question is less than 5 pounds. Upon stipulation of counsel the protests were sustained in so far as they relate to coverings of tea made of materials other than glass, bamboo, or fiber. United States *v.* Wright (6 Ct. Cust. Appls., 528; T. D. 36147) followed.

No. 39646.—Protest 784285 of Merchants Importing Co. (New York).

PRINTING PAPER—COUNTERVAILING DUTY.—It is claimed that no countervailing duty should have been assessed upon certain printing paper from Belgium.

Opinion by HAY, G. A. It was found that no bounty had been allowed, and therefore no countervailing duty should have been assessed under paragraph E of section 4, tariff act of 1913.

BEFORE BOARD 2, APRIL 28, 1916.

No. 39647.—Protest 791612 of Thomas Nevin (New York).

BOTTLE CAPS.—Merchandise described by the appraiser as colored metallic bottle caps, classified at 40 per cent ad valorem under paragraph 164, tariff act of 1913, is claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

Opinion by FISCHER, G. A. The bottle caps in question were found to be composed of viscose, similar to those held in Nevin *v.* United States (5 Ct. Cust. Appls., 423; T. D. 34945), to be dutiable as a nonenumerated manufactured article under paragraph 385. Protest sustained.

No. 39648.—Protests 764840, etc., of J. R. Hopkins (St. Louis).

LAMP SHADES.—Lamp shades classified as in chief value of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed to be composed chiefly of bamboo or wood, dutiable at 25 per cent under paragraph 175, or at 15 per cent under paragraph 176.

Opinion by HOWELL, G. A. The evidence showed that the shades are made of bamboo, lined with silk and trimmed with fringe of silk or artificial silk. Protests overruled, the component material of chief value not having been shown by competent proof. Morimura *v.* United States (6 Ct. Cust. Appls., 475; T. D. 36119) noted.

No. 39649.—Protest 759542 of W. A. Brown & Co. (New York).

FIGURED COTTON CLOTH.—Jacquard figured cotton cloth classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the cotton cloth in question was held dutiable as woven figured, under paragraph 252, as claimed.

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BEFORE BOARD 3, APRIL 28, 1916.

No. 39650.—Protests 737768, etc., of Meyer & Lange (New York).

BISCUITS CONTAINING CONFECTIONERY.

WAITE, *General Appraiser:* The goods in question were imported from Germany and are invoiced under German names. They are baked articles. They were assessed under paragraph 194, tariff act of 1913, and are claimed to be free of duty under paragraph 417. These paragraphs read as follows:

194. Biscuits, bread, wafers, cakes, and other baked articles, and puddings, by whatever name known, containing chocolate, nuts, fruit, or confectionery of any kind, and without regard to the component material of chief value, 25 per centum ad valorem.

417. Biscuits, bread, and wafers, not specially provided for in this section.

A further claim is made for assessment under paragraph 385 as an unenumerated manufactured article, but we think there is no merit in this claim and therefore overrule it.

Samples of three out of the four different varieties of articles in question were introduced in evidence and marked, respectively, Exhibits 1, 2, and 3. The testimony is that the fourth article, in so far as concerns structure and material, is the same as Exhibit 1. An inspection of these articles shows them to have been baked, and we think they may be termed cakes or cake. They are, at all events, baked articles made of dough containing sugar. Exhibit 1, which is the same as the fourth article mentioned, consists of a flat, rectangular cake, over the top of which is a coating of some white material, sweet to the taste. Exhibit 2 is a small, round, baked article having over the entire surface a white coating of some kind, hard and sweet to the taste. Exhibit 3 can be described as resembling a cake of gingerbread, or molasses cake. It is coated over the top with some brown material which gives it a smooth, shiny appearance resembling enamel or varnish. Of what it is made we are unable to determine. It has a sweet taste when separated from the loaf.

All the articles are of a reddish brown color on the inside, and more or less sweet to the taste. The evidence does not give us any information as to what the coatings, cings, or frostings are made of. The collector has assessed the goods as containing either fruit, chocolate, nuts, or confectionery. The burden, then, is upon the importers to overcome the presumption of correctness of this classification. We do not think they have done so. The articles appear to be of the same character as those passed upon in United States *v.* Meadows (5 Ct. Cust. Appls., 532; T. D. 35177). We think this case should be governed by that decision upon such points as are in controversy here.

The protests are overruled.

No. 39651.—Protest 785764 of Mark Cross Co. (New York).

PROTEST FEE.

HAY, *General Appraiser:* This is a protest against the assessment on a single protest of a fee of $3, for the reason that the protest covered three different classifications of merchandise. The importers' contention is that it was a single protest and that under the law a fee of but $1 could be charged. The protest is submitted upon a stipulation admitting as part of the record the report of the collector on this protest and a copy of the protest upon which the fee of $3 was paid.

This record upon which the case is submitted discloses the merchandise to be fitted leather cases embraced in 13 different entries, the merchandise being assessed under four several paragraphs of the law, and the protestant claiming that some of the items should be assessed under paragraph 128, some under paragraph 176, and some under paragraph 360. The collector in his report to the board upon this protest says the collection of the three fees was done under the instructions contained in the department letter (T. D. 34541). Presumably it was paragraph 3 of that letter which the collector sought to follow. That paragraph reads as follows:

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If a protest relates to a number of entries and raises different issues with respect to each of two or more entries, each separate issue raised on different entries will contitute a separate protest and a fee will be charged for each issue so raised.

That provision of law which provides for a protest fee was thoroughly discussed and construed in the decision of the Court of Customs Appeals in United States *v.* McCoy (5 Ct. Cust. Appls., 264; T. D. 34445). Whatever may have been our opinion before the rendition of that decision, the decision is binding upon us and equally binding upon the collector and the Secretary of the Treasury, and the law enacted by Congress exists now as construed in that decision. The Secretary of the Treasury's letter upon which the collector acted is apparently an interpretation of that decision. We think, however, that it is not a true and correct interpretation. While the exact question here presented was not presented in that case the language of the court can leave no doubt as to what was the view of the court with reference to the entire scope and effect of the protest fee provision of the law of 1913. The court in the general discussion of the meaning and purpose of that provision of the law went back and reviewed the history of protests, reaching the conclusion that the "protest" provided for in the statute under consideration was the same as that theretofore existing whether designated in the statute as a "protest" or a "notice in writing." The court in its conclusions in that case used the following language, which we think clearly indicates that the meaning given to the decision by the Secretary's letter is not the true one:

If we are right in this, then the provision that the protest shall be deemed "abandoned and waived unless within 30 days from the date of filing thereof the person who filed such notice or protest shall have deposited with the collector of customs a fee of $1, with respect to each protest," is clearly referable to such protest as was common when this provision was enacted and relates to the protest which may cover one or more entries.

Under the act of 1890 and the like provision in 1909, the claim in writing (protest) was something more than a registering of dissatisfaction to the end of preserving rights if a *future* action should be taken. It was itself the institution of a proceeding to test the validity of the action of the collector and partook of the nature of a pleading, and was so treated and construed. It might, therefore, very properly include all claims having a like basis where the parties were the same, the question was the same or kindred, and—multifariousness being avoided—there was no apparent reason why such claim in writing might not relate to more than one entry so long as the importer set forth therein "distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto." The office of the protest provided for by paragraph N (which now assumes in the statute the name long since accorded to it in practice) is the same precisely as was that of the corresponding paper provided for under the previous law under the title of a "notice in writing." No narrow distinction between the two should be admitted. The language "file a protest or protests in writing with the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto" does not establish a purpose to change the practice. The introduction of the plural here might have a wider influence but for the fact that the language "in respect to each entry or payment" is still retained and is referable as well to "protest" as to "protests."

The protest is therefore sustained and the collector directed to refund the $2 exacted in excess of the protest fee required by law.

No. 39652.—Protest 790973 of B. M. Shipman Co. (New York).

Clerical Error.—It is claimed in this case that through clerical error in making the entry certain fish roe was greatly undervalued.

Hay, *General Appraiser:* * * * It appears that the protestants made entry of the roe in question upon a pro forma invoice as ten barrels herring roe, $5. The appraiser advanced the value to $4.86 per barrel, or a total appraised value of $48.60. The protestants introduced testimony to show that the clerk in making the entry was instructed to place a value of $5 per barrel upon the roe, making a total entered value of $50. The instructions were misunderstood by the clerk, and a total entered value of $5 was made. It is claimed by the protestants that $5 for ten barrels of herring roe

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was so ridiculously small as to make it manifest to the collector that the importer had made a clerical mistake in his entry. There is some question as to whether or not a court would take judicial knowledge of the fact that at all times roe herring was worth more than $5 for ten barrels. Of course, there may be circumstances at which that price may not be ridiculously low. At best, if the error is manifest at all, it is manifest to the understanding. See Gillespie *v.* United States (124 Fed., 106). This we do not understand to be the rule with reference to clerical errors now. Under the decisions of the Court of Customs Appeals, which are controlling in this issue, a clerical error must be manifest from the papers that are before the collector. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) and United States *v.* Wyman & Co. (4 Ct. Cust. Appls., 264; T. D. 33485).

This, we think, is not true in the case at bar. The protest is overruled.

(T. D. 36366.)

Drawback on hatters' furs.

Drawback on cleaned and blended hatters' fur produced by the C. B. Rutan Co., of West Orange, N. J., in whole or in part from imported furs for the account of Jonas & Naumburg, of New York, N. Y.

TREASURY DEPARTMENT, *May 3, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cleaned and blended hatters' furs produced by the C. B. Rutan Co., of West Orange, N. J., in whole or in part from imported furs for the account of Jonas & Naumburg, of New York, N. Y.

A record shall be kept by Jonas & Naumburg, which will show, in the case of each lot of furs cleaned and blended for their account, the blending lot number thereof, the date of shipment, the quantity, value, and identity of imported fur of each kind, the quantity and value of domestic fur contained in the lot, and the quantity of finished hatters' fur returned. A record shall be kept by the C. B. Rutan Co., which will show, in the case of each lot of furs cleaned and blended for the account of Jonas & Naumburg, the blending lot number and manufacturing lot number thereof, the date of treatment, the total quantity of fur received, the quantity of cleaned and blended fur produced therefrom, and the quantity and value of the waste resulting. Sworn abstracts from such records shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported fur used in the manufacture of the exported cleaned and blended hatters' fur, as shown by the abstracts from the records described above, the allowance for waste to be reduced according to the quantity of imported fur which the value thereof will replace.

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The sworn statements of Jonas & Naumburg and the C. B. Rutan Co., dated March 27 and April 25, 1916, respectively, are transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on cleaned and blended hatters' fur exported on or after November 30, 1915.

Respectfully, WM. P. MALBURN,
(104284.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36367.)

Drawback on confectionery.

T. D. 35788 of October 18, 1915, extended to cover confectionery manufactured by the Hershey Chocolate Co., of Hershey, Pa., with the use of imported raw sugar.

TREASURY DEPARTMENT, *May 3, 1916.*

SIR: The department's regulations of October 18, 1915 (T. D. 35788), providing for drawback on confectionery manufactured by the Hershey Chocolate Co., of Hershey, Pa., with the use of imported almonds and refined sugar produced from imported raw sugar, are hereby extended to cover such products manufactured by the said company with the use of imported raw sugar.

The quantity of imported raw sugar which may be taken as a basis for the allowance of drawback shall not exceed an amount quantitatively equal to the sucrose content of the exported confectionery, as shown by the sworn statement of the manufacturers, dated April 12, 1916, which is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(80279.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36368.)

Drawback on butter.

Drawback on "export butter" produced by V. Lopez & Co. (Inc.), of New York, N. Y., with the use of wholly imported butter or imported and domestic butter in combination with other materials.

TREASURY DEPARTMENT, *May 3, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on so-called "export butter" produced by V. Lopez & Co. (Inc.), of New York, N. Y., with the use of wholly imported butter or imported and domestic butter in combination with other materials.

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A record shall be kept in the manner described in the sworn statement of V. Lopez & Co., dated April 20, 1916, transmitted herewith, which will show, in the case of each lot of "export butter" produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity and identity of imported butter, the quantities of domestic butter and other materials used in the production thereof, and the quantity of "export butter" obtained. A sworn abstract from such record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported butter appearing in the exported "export butter," as shown by the abstract from the record described above.

Drawback may be allowed under these regulations on "export butter" exported on or after April 5, 1916.

Respectfully, WM. P. MALBURN,
(100394–5.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36369.)

Drawback on cigarettes and tobacco.

Drawback on cigarettes and shredded and blended tobacco manufactured by the Samsoun Tobacco Co., of New York, N, Y., with the use of imported Turkish leaf tobacco,

TREASURY DEPARTMENT, *May 3, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarettes and shredded and blended tobacco manufactured by the Samsoun Tobacco Co., of New York, N. Y., with the use of imported Turkish leaf tobacco.

The allowance shall not exceed the quantity of imported Turkish leaf tobacco appearing in the exported products, as shown by the sworn statement of the manufacturers, dated April 21, 1916, which is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on cigarettes and shredded and blended tobacco exported on and after March 6, 1916.

Supplemental sworn schedules covering other brands of cigarettes and tobacco or showing changes in the quantities of imported leaf tobacco used may be filed, and upon verification of such supplemental schedules drawback may be allowed on the products covered thereby.

Respectfully, WM. P. MALBURN,
(104774.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36370.)

Drawback on confectionery.

Drawback on confectionery manufactured by Bunte Bros., of Chicago, Ill., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *May 3, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on confectionery manufactured by Bunte Bros., of Chicago, Ill., with the use of refined sugar produced in whole or in part from imported raw sugar.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported confectionery, as shown by the sworn statement of the manufacturers, dated April 21, 1916, which is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on confectionery exported on or after April 10, 1916.

Supplemental sworn schedules covering other kinds of confectionery may be filed, and upon verification of such supplemental schedules drawback may be allowed on confectionery manufactured in accordance therewith.

Respectfully, WM. P. MALBURN,
(100732–5.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 36371.)

Common carrier.

Approving bond of Missouri, Oklahoma & Gulf Railway Co. as a common carrier for the transportation of ores.

TREASURY DEPARTMENT, *May 4, 1916.*

SIR: The department has received your letter of the 29th ultimo, with which was inclosed a bond, in duplicate, of the Missouri, Oklahoma & Gulf Railway Co. as a common carrier for the transportation, exclusively, of ore and its products in bond.

The bond is approved and one copy thereof is herewith inclosed, to be placed upon the files of your office.

Respectfully, WM. P. MALBURN,
(104992.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *St. Louis, Mo.*

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(T. D. 36372.)

Leather picker straps.

Appeal directed from decision of the Board of United States General Appraisers of March 8, 1916, Abstract 39351, involving the classification of certain leather picker straps.

TREASURY DEPARTMENT, *May 4, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 29th ultimo inviting attention to the decision of the Board of United States General Appraisers of March 8, 1916, Abstract 39351, in which certain leather picker straps, which had been assessed with duty at the rate of 30 per cent ad valorem as manufactures of leather under paragraph 360 of the tariff act of October 3, 1913, were held by the board to be dutiable at the rate of 15 per cent ad valorem as articles manufactured in whole or in part, not provided for, under paragraph 385 of the said tariff act.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(95704.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36373.)

Domestic bags exported and returned.

Bond may be filed on entry for production of affidavit on customs Form 3313.

TREASURY DEPARTMENT, *May 4, 1916.*

SIR: The department refers to your letter of the 3d ultimo, relative to your practice under article 337 of the Customs Regulations of 1915 in requiring that a declaration on customs Form 3313 must be filed at the time of entry.

You state that certain importers contend that they are entitled to give a bond for the production of the affidavit, by virtue of article 333 of the customs regulations, and you request that a definite ruling may be made covering the importation of domestic bags.

Article 333 of the Customs Regulations of 1915 requires that certain documents shall be filed on entry, or bonds given for the production thereof, in the case of domestic products exported and returned. In the case of domestic bags exported and returned, article 337 requires that a declaration on customs Form 3313 shall be filed on entry, but does not state that a bond may be taken for the subsequent production of the declaration.

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You are hereby authorized to accept a bond for the production of the affidavit required in the case of returned bags, it being understood that the importation of the bags is made by the exporter thereof.

Respectfully, WM. P. MALBURN,
(104814.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Galveston, Tex.*

(T. D. 36374.)

Drawback on military equipment.

T. D. 35854 of November 2, 1915, amended to provide for an allowance to compensate for loss in shrinking the imported material.

TREASURY DEPARTMENT, *May 5, 1916.*

SIR: The department's regulations of November 2, 1915 (T. D. 35854), providing for drawback on military equipment and parts of military equipment manufactured by the Mills Woven Cartridge Belt Co., of Worcester, Mass., with the use of imported webbing, are hereby amended to provide for an allowance to compensate for loss in shrinking the imported material.

The manufacturing records of the Mills Woven Cartridge Belt Co. shall show, in addition to the data called for in T. D. 35854, the yardage of the imported cloth both before and after shrinking, and such data shall be included in the abstract from the manufacturing records required to be filed with the drawback entry.

The allowance for loss in shrinking the imported cloth shall not exceed that actually resulting in the manufactured exported article, as shown by the abstract from the manufacturing record.

The supplemental sworn statement of the manufacturers, dated April 24, 1916, is transmitted herewith for filing in your office.

The allowance for loss herein provided for may be applied to articles exported on or after April 11, 1916.

Respectfully, WM. P. MALBURN,
(73839.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36375.)

Sugar, molasses, etc.

Paragraphs 177 and 178, tariff act of 1913, amended by an act approved April 27, 1916, so as to repeal the free provisos thereof.

TREASURY DEPARTMENT, *May 4, 1916.*

To collectors and other officers of the customs:

The appended act of Congress approved April 27, 1916, providing for the repeal of the free provisos of paragraphs 177 and 178 of the

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tariff act of October 3, 1913, is published for the information and guidance of customs officers and others concerned. In view of this act the rates of duty provided for in the said paragraphs 177 and 178 on sugar, molasses, and other articles continued in force on and after May 1, 1916, the same as prior to that date.

(64453.) ANDREW J. PETERS, *Assistant Secretary.*

[PUBLIC NO. 61, 64TH CONGRESS—H. R. 11471.]

An Act To amend paragraphs one hundred and seventy-seven and one hundred and seventy-eight of an Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, relating to the duty on sugar, molasses, and other articles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proviso of paragraph one hundred and seventy-seven of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen (Statutes at Large, volume thirty-eight, pages one hundred and fourteen to two hundred and two, inclusive), which proviso reads as follows: "*Provided further*, That on and after the first day of May, nineteen hundred and sixteen, the articles hereinbefore enumerated in this paragraph shall be admitted free of duty," be, and the same is hereby, repealed.

SEC. 2. That the proviso of paragraph one hundred and seventy-eight of the aforesaid Act, which proviso reads as follows: "*Provided*, That on and after the first day of May, nineteen hundred and sixteen, the articles hereinbefore enumerated in this paragraph shall be admitted free of duty," be, and the same is hereby, repealed.

Approved, April 27, 1916.

(T. D. 36376.)

Tea containers.

Intermediate containers of tea packed in packages of less than 5 pounds each dutiable under the first proviso of paragraph 627, tariff act of 1913, whether or not the total weight of the tea in such intermediate containers is less than 5 pounds. Outside cases containing tea packed in packages of less than 5 pounds each also dutiable under the said first proviso of paragraph 627 thirty days after the date hereof, whether or not there are intermediate containers, such assessment to be in addition to the duty on the intermediate containers when there are such.

TREASURY DEPARTMENT, *May 5, 1916.*

SIR: The department duly received your letter of December 28 last, relative to the assessment of duty on containers of tea packed in packages of less than 5 pounds each, the packages ranging from 1½ ounces to 1 pound.

It appears that in some instances the packages are packed in the cases without any intermediate containers, while in others there are intermediate containers containing less than 5 pounds, and these in turn packed in the cases.

The immediate coverings of tea packed in packages of less than 5 pounds each are free of duty, whether or not the packages are in

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intermediate containers, in accordance with the decision of the United States Court of Customs Appeals in T. D. 36147. In the same decision the court held intermediate containers of tea packed in packages of less than 5 pounds each to be dutiable under the first proviso of paragraph 627 of the tariff act of 1913, and the department is of the opinion that this ruling is applicable to intermediate containers of tea packed in packages of less than 5 pounds each, whether or not the total weight of the tea in such intermediate containers is less than 5 pounds. You will be governed accordingly.

The question also now arises whether the outer cases or containers of tea packed in packages of less than 5 pounds each are not also dutiable. The proviso of paragraph 627 in question is as follows:

> *Provided*, That the cans, boxes, or other containers of tea packed in packages of less than five pounds each shall be dutiable at the rate chargeable thereon if imported empty.

It appears that there are no intermediate containers in a large percentage of the importations of tea so packed and the said proviso of paragraph 627 would not appear to be of any general application unless it were extended to the outer packing cases. It may be noted also that the court said, in the next to the last paragraph of T. D. 36147, in regard to the rulings made therein:

> This construction * * * gives application to the paragraph by taxing the importation of intermediate containers of tea at least,

indicating that there might be other containers also dutiable.

You will, therefore, in cases of tea packed in packages of less than 5 pounds each imported or withdrawn from warehouse 30 days after the date hereof, assess duty under said first proviso of paragraph 647 of the tariff act of 1913 on the outside cases or containers, whether or not there are intermediate containers, the said assessment to be in addition to the duty on the intermediate containers when there are such.

Respectfully, ANDREW J. PETERS,
(100317.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Savannah, Ga.*

(T. D. 36377.)

Drawback on medicinal preparation.

Drawback on medicinal preparation designated as "Henry S. Wampole's palatable preparation of the extract of cod-liver oil compound," manufactured by the Henry S. Wampole Co., of Baltimore, Md., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *May 6, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on a medicinal preparation designated as "Henry S. Wampole's palatable preparation of the extract of cod-liver oil compound," manufactured by the Henry S. Wampole Co., of Baltimore, Md., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported medicinal preparation, with a maximum of the quantity shown in the sworn statement of the manufacturers, dated April 25, 1916, which is transmitted herewith.

Respectfully, ANDREW J. PETERS,
(104951.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 36378.)

Drawback on medicinal preparations.

Drawback on medicinal preparations manufactured by the Maltine Co., of New York—Amending T. D 35637

TREASURY DEPARTMENT, *May 6, 1916.*

SIR: The department's regulations of August 6, 1915 (T. D. 35637), providing for drawback on medicinal preparations designated as "Maltine, plain," and "Maltine, with cod-liver oil," manufactured by the Maltine Co., of New York, N. Y., are hereby amended by striking out from the second paragraph thereof the words "Maltine, plain," and substituting therefor the words "Maltine, with cod-liver oil."

Respectfully, ANDREW J. PETERS,
(70114.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36379.)

Nursery stock.

T. D. 33933 of December 1, 1913, prohibiting the importation of nursery stock in the mails amended.

TREASURY DEPARTMENT, *May 6, 1916.*

To collectors and other officers of the customs:

The department is advised by the Secretary of Agriculture that the prohibition of the importation of plants by mail, as published in T. D. 33933 of December 1, 1913, has been extended to include all growing or living plants, seeds, and other plant products for

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propagation, except field, vegetable, and flower seeds, and that the term "field seeds" includes only seeds of cereals, grasses, and other annual farm crops, and does not include bulbs and tubers.

T. D. 33933 is accordingly amended.

(92655-19.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36380.)

Drawback on lubricating oils.

Drawback on lubricating oils manufactured by the Standard Oil Co. of New Jersey with the use of imported degras.

TREASURY DEPARTMENT, *May 6, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on lubricating oils manufactured by the Standard Oil Co. of New Jersey with the use of imported degras.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated April 24, 1916, transmitted herewith, showing, in the case of each lot of lubricating oil manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity produced, and the quantity and identity of imported degras appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported degras appearing in the exported lubricating oil, as shown by the abstract from the manufacturing record.

Respectfully, ANDREW J. PETERS,
(95828.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36381.)

Drawback on dates.

T. D. 33893 of November 19, 1913, extended to provide for the filing of supplemental sworn schedules.

TREASURY DEPARTMENT, *May 8, 1916.*

SIR: The department regulations of November 19, 1913 (T. D. 33893), providing for drawback on package dates produced by the Smyrna Fruit Co., are hereby extended to provide for the payment of drawback on such dates packed in retail packages other than those described in the sworn statement of the manufacturers, dated September 22, 1913, upon the filing and verification of supplemental schedules covering the same.

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A supplemental schedule, dated April 27, 1916, is transmitted herewith.

Respectfully, ANDREW J. PETERS,
(95112.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36382.)

Plumage.

Rhea plumage entitled to entry only upon production of proof of domestication.

TREASURY DEPARTMENT, *May 8, 1916.*

SIR: In reply to your letter of the 2d instant, I have to advise you that through inadvertence the rhea was omitted from the list in T. D. 36322 amending article 538 of the Customs Regulations of 1915.

The plumage of the rhea should, therefore, be admitted only upon the production of proof that it was taken from domesticated birds, in accordance with T. D. 34913.

Respectfully, ANDREW J. PETERS,
(92655-27.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36383—G. A. 7901.)

D-handle spades—Agricultural implements.

D-handle spades, used principally by farmers in agricultural pursuits, are properly entitled to free entry under paragraph 391 of the act of 1913 as agricultural implements, rather than dutiable as manufactures of metal not specially provided for under paragraph 167 of said act.

United States General Appraisers, New York, May 4, 1916.

In the matter of protest 785432 of W. White against the assessment of duty by the collector of customs at the port of Detroit.

[Reversed.]

Wright & Wilhelmy Co. (*J. H. Boutelle* of counsel) for the importer.
Bert Hanson, Assistant Attorney General, for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* This protest involves the classification of certain D-handle spades. Duty was levied thereon at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for, and they are claimed to be properly entitled to free entry under paragraph 391 of said act as agricultural implements.

In United States *v.* Boker (6 Ct. Cust. Appls., 243; T. D. 35472) the United States Court of Customs Appeals laid down the rule "that the use of the implement must determine its classification

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whether or not an agricultural implement within the paragraph, and that that use, and the determinative fact, is chief use."

While the record herein is somewhat meager in information concerning the various uses for which the spades in question might be employed, we are satisfied that the statement of the witness who appeared for the importer to the effect that said spades are sold to and used principally by farmers has not been overcome by competent testimony to the contrary.

In reaching this conclusion, we concur in the views expressed by the department in its letter of instructions dated August 9, 1915, addressed to the collector of customs at New York, published as T. D. 35643, wherein it said:

> It appears from an investigation of this subject made by the department that spades, both long-handled and D-handled, and whether polished or black, are chiefly used for agricultural purposes, and that ordinary shovels, both the polished and the black and both the long-handled and the D-handled, are chiefly used for purposes other than agricultural.
>
> In view of the foregoing, you will pass free of duty as agricultural implements under paragraph 391 of the tariff act of October 3, 1913, spades, either polished or black and either long-handled or D-handled.

On the record we find the spades in question to be properly classifiable free of duty under paragraph 391 as agricultural implements, and we therefore sustain that claim in the protest and reverse the decision of the collector.

(T. D. 36384—G. A. 7902.)

Shaving sets—Mirrors.

Shaving sets, composed of a metal stand supporting an adjustable mirror having a metal frame, a china soap dish, and a shaving brush with a metal handle, the soap dish, mirror, and brush being of equal utility, and the mirror being of less value than either of the other articles, are not dutiable as mirrors not exceeding in size 144 square inches, but (nickel-plated base metal being the component material of chief value in the entirety) as manufactures of metal, not plated with gold or silver. An entirety consisting of a mirror and other articles to be classified as a mirror must have the mirror as the predominating feature thereof, not necessarily in value, but in utility at least.

United States General Appraisers, New York, May 4, 1916.

In the matter of protest 794933 of Baltimore & Ohio Railroad Co. against the assessment of duty by the collector of customs at the port of Baltimore.

[Reversed.]

Importers not represented by counsel.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* The merchandise in question consists of shaving sets, being a nickel-plated metal stand holding a

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small round mirror, a china soap dish, and a shaving brush with a nickel-plated metal handle.

These shaving sets were assessed with duty as mirrors not exceeding in size 144 square inches, with or without frames or cases, at 30 per cent ad valorem under paragraph 95 of the tariff act of 1913, and are claimed dutiable as manufactures in chief value of metal at 20 per cent ad valorem under paragraph 167 of the same act.

At the hearing the witness testifying on behalf of the protestants stated that the values of the component materials in the official sample of this merchandise were about as follows:

		Marks.
Brush	per gross	12
Mirror	do	10
Cup or soap dish	do	12
Other metal parts	do	8
Cost of shaving sets	do	42

Besides the "other metal parts" mentioned by the witness, the frame of the mirror and the handle of the brush are composed of metal. It was also shown that in the higher priced articles on the invoice the value of the mirror was less, in proportion to the rest of the article, than in the article represented by the official sample, and that the range in prices of this merchandise on the invoice was from 42 marks per gross up to 156 marks per gross. The examiner who passed the merchandise testified that metal is the component material of chief value.

In the matter of protest 17196b of O. G. Hempstead & Son, G. A. 2008 (T. D. 13814), the board passed on certain gentlemen's toilet cases, the covers of which were composed of celluloid, bound with leather, and glued to cardboard or stiff paper. The covers were joined together by means of narrow strips of leather and opened and closed in the same manner as a book. On the inner surface of one of the covers was pasted a beveled mirror plate, bound with leather, and the other was provided with a leather pocket divided into three compartments containing metal glove fasteners, mustache comb, and bone ear and finger-nail cleaner. The inner exposed surface of the cases was lined with blue cotton, and on the outer surface of one of the covers was a figure stamped in celluloid. The cases when closed were about 3½ inches long and 2 inches wide. *The value of the combs, nail cleaners, and glove fasteners was too insignificant in that case to be considered by the board.* The board found that the merchandise was pocket mirrors in cases and that celluloid was the component material of chief value therein. The merchandise was held dutiable as mirrors at 45 per cent ad valorem under paragraph 122 of the tariff act of 1890.

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In that case the claim was made that the merchandise was dutiable as mirrors, rather than as articles of collodion as classified by the collector. The board said:

The merchandise was invoiced as entireties, and no claim is made by the appellants that the combs and other articles accompanying the case are subject to separate rates of duty. To hold that by reason of the presence of said articles duty should be assessed on 225 pounds (the weight of the combined pocket mirrors and contents) at 60 cents per pound, the specific rate applicable to articles made of celluloid, when there is estimated to be but 30 pounds of celluloid in said articles, would seem to be a strained construction of revenue law.

In the matter of protest 65170f of Errico Bros., G. A. 4843 (T. D. 22744), the board had before it a carving representing a dragon, 17 inches high and 17 inches wide from wing to wing. In the center, grasped in the claws of the dragon, was an oval-shaped beveled-edge mirror, 7 inches wide and 5¾ inches long. It was shown that the mirror formed only a small percentage of the value of the entire article, the mirror being worth about 1 lira and the wood about 16½ lire. We quote the following from the board's opinion:

It is not an uncommon thing to find frames for mirrors more valuable than the mirrors contained therein, but that fact would not change their classification, for such articles would still be mirrors in fact. * * * The mirror is not changed in its character or use by the addition of the fancy and expensive frame or setting in which it is placed. It is, in fact, a mirror with fancy and ornamental mounting, and the comparative cost of each part does not alter the character of the entirety. In our opinion it is within the meaning of the tariff act a mirror with frame.

The Court of Customs Appeals in United States *v.* Metropolitan Aluminum Co. (3 Ct. Cust. Appls., 224; T. D. 32537) affirmed the board's holding that pocket imitation leather goods holding small mirrors and combs, or pencils and memorandum tablets, were dutiable as mirrors in cases under paragraph 109 of the tariff act of 1909. As the court said, the crux of that case was whether or not the presence of the comb and paper and pencil in the cases took the articles beyond the category of "mirrors in cases" in paragraph 109; that the finding of the board that the merchandise was "mirrors in cases" might be construed as a finding as to the minor importance or relative insignificance of the combs or pencils or writing tablets; and that the construction of the articles indicated their prime and probably only substantial usefulness rested in the use of the mirrors.

In re protest 702103 of B. Altman & Co., G. A. 7638 (T. D. 34919), the board held small circular mirrors, set in a celluloid case having a handle and a receptacle in the back, closed by a lid, for holding powder or a powder puff, composed in chief value of pyroxylin, dutiable as mirrors under paragraph 109, and not as manufactures in chief value of pyroxylin under paragraph 17 of the tariff act of 1909; and that the word "mirror" must be taken in its ordinary sense, the addition of a frame or case neither changing its character or use, nor

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advancing it into a new article. In that case the predominating feature of the article was the mirror.

We think the cited cases can be distinguished from the case at bar. In all of them the mirror was the predominating feature of the article. In this case the mirror is not, the brush and soap dish in the shaving set in question being of equal utility with the mirror, besides being of greater value. It is true that in the Errico case, *supra*, the value of the mirror was very much less than the frame or setting, but the mirror was still the predominating feature, and the costly frame did not destroy its usefulness as a mirror.

It seems to us, therefore, that this shaving set should not have been classified as a mirror, for the reason, as before stated, that the mirror is of no more utility than the other articles in the entirety, and does not predominate either in usefulness or value.

We therefore hold this merchandise dutiable as a manufacture of metal at 20 per cent ad valorem under paragraph 167.

The protest is sustained and the collector's decision reversed.

(T. D. 36385—G. A. 7903.)

Bistouries and scalpels.

Bistouries and scalpels, being knives with folding blades, are properly classifiable for duty at the rate of 55 per cent ad valorem under the provision in paragraph 128 of the act of 1913 for "knives by whatever name known, * * * which have folding or other than fixed blades or attachments," as classified by the collector, rather than dutiable at the rate of 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for, as claimed by the importers.

United States General Appraisers, New York, May 5, 1916.

In the matter of protest 757612 of F. A. Koch & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Curie, Smith & Maxwell (*Thomas M. Lane* and *Herbert Wallace* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of surgical and veterinary cutting instruments, the blades of which fold into the handles. Duty was levied thereon at the rate of 55 per cent ad valorem under the following provision in paragraph 128 of the act of 1913:

128. Penknives, pocketknives, clasp knives, pruning knives, budding knives, erasers, manicure knives, and all knives by whatever name known, including such as are denominatively mentioned in this section, which have folding or other than fixed blades or attachments, * * *.

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The importers contend that said articles are not knives, but are what are known as bistouries and scalpels, and that consequently they are not dutiable under the above provisions of paragraph 128, but rather are properly classifiable as manufactures of metal not specially provided for under paragraph 167 of said act and dutiable thereunder at the rate of 20 per cent ad valorem

At the hearing counsel for the importers endeavored to show that these articles were known and recognized in trade and commerce as bistouries and scalpels, and were never bought or sold as knives; but the Government overcame this testimony with positive proof that said articles were commercially known and recognized as knives, and we accordingly find as a fully established fact that they are so known and recognized. Moreover, there appears to be no material difference between such trade understanding and the common and ordinary meaning of the terms mentioned. We quote from the following authorities:

Webster's Dictionary:

Knife.—An instrument consisting (in its modern form) of a thin blade, usually of steel and having a sharp edge for cutting, fastened to a handle; a longitudinally edged instrument operated by pressure.

Bistoury.—Med. A surgical instrument consisting of a small slender knife, either straight or curved, sharp or probe-pointed.

Scalpel.—Surg. A small, straight knife with a thin, keen blade.

Standard Dictionary:

Knife.—A blade, usually with one sharpened edge, set in a handle, for cutting.

Scalpel.—A small pointed knife used in anatomical dissections and in surgery.

Bistoury.—Surg. Any narrow-bladed knife used in making minor incisions.

Although our finding that these articles are knives with folding or other than fixed blades is in itself sufficient reason for classifying them under paragraph 128, there is still another ground upon which the protest should be overruled.

The language of paragraph 128 is descriptive, not denominative, and testimony tending to prove commercial designation is therefore wholly immaterial in determining the classification of articles under said paragraph. If the articles are knives *per se*, or such as would commonly be included within the general category of knives—as a mere inspection of the articles under consideration shows them to be—they are unquestionably covered by the terms of the paragraph, even though they may be commercially dealt in and recognized by certain specific trade names. The only essential and determinative fact to be established is that they are knives which have folding or other than fixed blades or attachments. The fact that they are designated in trade and commerce as "bistouries" and "scalpels" merely serves to identify and distinguish these two specific classes of knives from the general class of articles which are knives within the common and ordinary understanding of that term.

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And so, even though the question of commercial designation were in the case—which it is not—it is perfectly obvious that these bistouries and scalpels, possessing as they do all the distinctive features and characteristics common to knives, in that they have blades which fold into the handles, would necessarily and properly be included within the scope of any general provision for knives.

In holding "capers put up in vinegar and imported in bottles and casks" to be a species of pickles and therefore properly classifiable as prepared vegetables under paragraph 252 of the act of 1909, the United States Court of Customs Appeals, in the case of Austin, Nichols & Co. *v.* United States (4 Ct. Cust. Appls., 261; T. D. 33483), in the course of its opinion made the following observations:

Testimony was introduced by the importers to the effect that commercially the merchandise at bar always passes under the specific name of capers and never under the name of pickles. Upon this testimony, however, the board held that although the trade always calls the merchandise capers, nevertheless the name pickles, in common acceptation, generically includes articles possessing the characteristics of the capers in question, and that the testimony fell short of establishing a definite, uniform, and general trade meaning of the word "pickles" which would exclude the importation.

The court is of the opinion that this finding of the board is not contrary to the real meaning of the evidence contained in the record. It is clear that many articles belonging to well-known classes may nevertheless always pass in trade under more specific names, but this fact alone would not necessarily withdraw them for tariff purposes from the larger class to which the species may belong.

The board was justified in the conclusion that the present testimony does no more than disclose a case of that character. While the capers in question are invariably called capers, nevertheless they possess certain qualities and characteristics which bring them within the class of pickles.

The authorities cited by counsel for the importers have no application here, as they involve issues which arose under other and entirely different tariff laws. Indeed, it would appear that the present provisions in paragraph 128, as well as the corresponding provisions in the act of 1909, were deliberately intended by Congress to meet and overcome the heretofore prevailing rulings covering merchandise of the character here under consideration. It will be noted that prior to the passage of the tariff act of 1909 there was no specific provision for knives by whatever name known which have folding or other than fixed blades or attachments.

Commenting upon the far reaching and comprehensive scope and extent of the present provision, Judge Barber, speaking for the United States Court of Customs Appeals in Quirk *v.* United States (6 Ct. Cust. Appls., 444; T. D. 35983), a case which involved the classification of certain budding and pruning knives for which free entry was claimed as agricultural implements, said:

It is rather difficult to see how a more definite or certain description of the knives to be made dutiable thereunder or indeed of the merchandise here involved could

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have been successfully undertaken. These are pruning or budding knives. If they are not such, they are knives which have a folding or other than fixed blade or attachment.

Irrespective, therefore, of the commercial name or names under which the knives in question may be known, we find as a fact that they are knives with blades which fold into the handles. As such they are accurately described by the language of paragraph 128, under which they have been classified by the collector.

The protest is accordingly overruled and the decision of the collector affirmed.

(T. D. 36386—G. A. 7904.)

Cotton cloth—Dotted swiss.

1. Cotton Cloth.

Cotton cloth known as dotted swiss, in which dots or figures are inserted in the foundation fabric by the swivel attachment to the loom, is the "cotton cloth" of the statute and is dutiable at the appropriate rate under paragraph 252, tariff act of 1913.

2. Average Number of the Yarn in Cotton Cloth.

Paragraph 253 prescribes certain general rules to be followed in ascertaining the average number of the yarn in cotton cloth in order to find the rate of duty applicable to the merchandise and these provisions were not intended to lay down an accurate method for finding the precise number of the yarn used in manufacturing the cloth.

3. Dotted Swiss.

The average number of the yarn in cotton cloth known as dotted swiss, in which the figures are produced by the swivel attachment to the loom, is found under the provisions in paragraph 253 by counting the swivel threads with the warp threads and measuring them as if they were continuous and extending the length of the cloth, the distance covered by them in the fabric in the condition as imported, and weighing the cloth after excessive sizing is removed by boiling or other suitable process.

United States General Appraisers, New York, May 5, 1916.

the matter of protests 789784, etc., of Max Alder against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Brooks & Brooks (*Frederick W. Brooks, jr.*, and *Ernest F. A. Place* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (Fischer, Howell, and Cooper, General Appraisers).

Cooper, *General Appraiser:* The merchandise covered by these protests consists of woven fabrics of cotton in the piece, known as dotted swisses. The collector classified the goods as "Jacquard figured manufactures of cotton" and duty was taken at the rate of 30 per cent ad valorem under paragraph 258 of the act of 1913. The claim relied upon by the importers is that the goods are dutiable at the appro-

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priate rate according to the average number of the yarn under paragraphs 252 and 253.

The Assistant Attorney General, in his brief, admits that, in view of the decision in the case of Sachs & Co., G. A. 7618 (T. D. 34858), which was affirmed on appeal, United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the merchandise is not properly classifiable under paragraph 258, but he takes the position that the cotton-cloth paragraphs (252 and 253) are not applicable to this merchandise because the structure of the fabric is such that it is impossible to determine with accuracy the average number of the yarn in accordance with the methods prescribed in paragraph 253, and that the cloth in question is properly classifiable as "manufactures of cotton" under paragraph 266.

The testimony shows that the cloth in question was woven on an ordinary loom, and that the figures in the cloth were produced entirely by the swivel attachment to the loom. The question to be decided is whether or not cotton cloth so woven is the cotton cloth provided for in paragraph 252.

The goods in question have an ordinary plain foundation weave, and the testimony shows that the dots and figures were inserted in the foundation in the process of weaving by a swivel attachment to the loom. In the course of the weaving, when the particular dot or figure is finished, the thread is allowed to drop out of the fabric and is carried on the back of the fabric until the point is reached farther along, lengthwise of the cloth, where another dot or figure is to be formed, when the process is repeated. It appears from the testimony that each longitudinal row of dots is produced by a separate shuttle or swivel which carries the yarn lengthwise of the fabric, but which zigzags back and forth, dropping the thread horizontally, or parallel with the weft, over the space occupied by the figure it produces. The swivel attachment may have almost any number of shuttles, according to the number of longitudinal rows of dots in the fabric. When the swivel or shuttle has inserted one thread of the figure the next filling thread of the fabric is brought up to hold it in place. This process is repeated until the figure is complete, when the shuttle ceases to operate until the position for the next figure in a longitudinal direction on the fabric is reached. After the weaving is completed all of the loose threads at the back of the fabric are clipped away. It will thus be seen that the thread forming the pattern runs, in weaving, lengthwise or warpwise of the cloth, although in each particular dot or figure it interlaces with the warp threads and appears, from an inspection of the fabric, to run weftwise or across the cloth from selvage to selvage.

Two methods for ascertaining the average yarn number of this material were suggested by the witnesses for the importer at the

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trial, but different results were obtained by each method, although in some instances the goods were found to come within the same classification for duty purposes.

By the first method the witnesses considered the swivel threads as if they were extra threads woven into the fabric the same as in Jacquard figures, running from selvage to selvage, and they counted them and measured them as if they extended across the fabric. This is the method held by the board to be the system prescribed by the statute for finding the average yarn number in cloth having clipped threads inserted in the cloth by the Jacquard loom in the case of P. K. Wilson & Son, G. A. 7881 (T. D. 36304).

By the second method the witness counted the swivel threads with the warp threads and considered their length to be the distance covered by them in the cloth, that is, the same as the length of the piece of cloth.

The Assistant Attorney General contends that neither method is accurate nor in accordance with the directions for ascertaining the average number of the yarn prescribed in the statute.

In the case of P. K. Wilson & Son, *supra*, this board held that Congress did not intend that duty on cotton cloth should be levied in accordance with the precise number of the yarn used in manufacturing the cloth, but that it intended merely to lay down an arbitrary rule for finding the rate of duty applicable to the imported fabrics. In that case the importers claimed that the method used for finding the average yarn number by the Government officials was not accurate, while the Assistant Attorney General there contended that the method for finding the average yarn number prescribed in the statute was an arbitrary method which did not necessarily give accurately the number of the yarn actually used in manufacturing the cloth. The same ruling is applicable in the case at bar, and we hold that the objection of the Assistant Attorney Gen-General that the methods submitted by the importer are inaccurate is without merit.

But let us analyze the separate provisions of paragraph 253 to see if either or which of the methods proposed by the importer corresponds or complies with the general directions therein given for ascertaining the average number of the yarn. The first sentence of the paragraph reads as follows:

> The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule unless otherwise specially provided for, shall be held to include all woven fabrics of cotton, in the piece, whether figured, fancy, or plain, and shall not include any article, finished or unfinished, made from cotton cloth.

It can not be disputed that the merchandise is question is "woven fabrics of cotton, in the piece, whether figured, fancy, or plain," and Congress, in enacting this definition into the law, clearly shows that

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it was the intention to apply the rates of duty applicable to "cotton cloths" to fabrics of the character of those here under consideration. Dotted swisses have been held to be dutiable under the provisions for cotton cloth in prior tariff acts (*In re* Blaisdell & Horan, G. A. 2618, T. D. 15041; United States *v.* Albert, 60 Fed., 1012) and no valid reason has been assigned for discontinuing this practice under the present act. Customs officers are by this provision directed to hold such woven fabrics of cotton dutiable under the provisions for "cotton cloth," and in view of this provision it is the duty of the collector to ascertain the rate of duty applicable under the provisions of paragraph 252, using, of course, the methods for finding the average yarn number described in the statute.

The second sentence in the paragraph is as follows:

> In the ascertainment of the condition of the cloth or yarn upon which the duties imposed upon cotton cloth are made to depend, the entire fabric and all parts thereof shall be included.

There would seem to be no trouble in applying this provision to the merchandise in question. It signifies that all the threads in the cloth—that is, the extra figure threads as well as the warp and filling threads—are to be considered in the ascertainment of the rate of duty applicable.

The difficulty arises in applying the third sentence, which is as follows:

> The average number of the yarn in cotton cloth herein provided for shall be obtained by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the condition as imported, except that all clipped threads shall be measured as if continuous.

The Assistant Attorney General contends that the Government officials can not comply with this provision in computing the average number of the yarn in the merchandise in question because (1) the swivel threads in the figures extend but a short distance on the surface of the fabric and the distance covered by them in the cloth could not be accurately measured "in the cloth in the condition as imported" and (2) because they are not clipped threads, which the provision directs "shall be measured as if continuous," as if they extended from selvage to selvage.

The terms in the statute are general in their scope and do not purport to lay down exact rules for analyzing the cloth, but they state, in a general broad way, certain methods to be followed. The points raised by the Assistant Attorney General seem to be well taken if the importer's first method for ascertaining the average yarn number were the only one that could be adopted, for that method is based entirely upon assumptions and not upon facts. In the first place, the witnesses assume that each one of the swivel threads running weftwise in the figures are clipped threads, because the figures formed

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by them are similar to the figures formed by the clipped threads in the Jacquard figured goods. Each dot or figure is, in fact, made of a single thread which runs back and forth over the space covered by the figure. They further assume that the swivel threads run from selvage to selvage of the fabric and that the swivel threads in the different dots and figures which lay between the same weft threads in the foundation are parts of one continuous thread which extended from selvage to selvage, when, in fact, they are separate and distinct threads in each dot or figure, and they do not and never did extend from selvage to selvage. These, of course, are mere assumptions in order to bring the process within the methods for ascertaining the average yarn number prescribed in the statute, and, although the figures produced are similar to those produced by the Jacquard attachment on cloth known as clipped-thread goods, the weave in the two fabrics is different in character.

The second method suggested by the importers seems to exactly follow the mandate of the statute, and the correctness of this method does not appear to be seriously challenged in the Government brief. The course of the swivel threads in the cloth is from end to end of the fabric; that is, lengthwise. See United States *v.* Albert (60 Fed., 1012). These threads are clipped off at the end of each figure, and the statute provides that "all clipped threads shall be measured as if continuous." It also provides that the average number of the yarn "shall be obtained by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the condition as imported." Both of these provisions, therefore, are exactly satisfied if we find the average number of the yarn in accordance with the second contention of the importers; that is, by measuring the swivel threads as if continuous and extending from one end of the cloth to the other. Of course the swivel threads traverse the length of the cloth in a sort of zigzag manner, and the result obtained by this method for computing the average yarn number will necessarily vary, according to the width and size of the figures, and will not give the precise number of the yarn actually used in the manufacture of the cloth, but, as before mentioned, the rule is an arbitrary one for ascertaining this dutiable quality in the merchandise, and Congress could not have supposed that the method prescribed would give the actual number of the yarn in the cloth. In the case of P. K. Wilson & Son, *supra*, the board was required to find the proper method of ascertaining the average number of the yarn in Jacquard figured clipped-thread goods. Respecting the provision in paragraph 253, now under consideration, we said:

This (that Congress intended merely to lay down a rule for finding the rate of duty applicable to imported fabrics) is further shown by the provision that "the average number of the yarn in cotton cloth * * * shall be obtained by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the con-

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dition as imported," which necessarily means that the estimated length is an arbitrary one, since all threads, because of their necessary interweaving, have an actual length which is greater than that of the length or the width of the cloth or the distance covered by the thread in the cloth. Thus, if a fabric contains a wavy or zigzag thread, it is not necessary to unravel the fabric to bring that thread out straight for measuring. The duty can be ascertained by an examination of the fabric in its imported condition.

No difficulty is encountered in applying the balance of the paragraph to the goods in question. It reads as follows:

In counting the threads all ply yarns shall be separated into singles and the count taken of the total singles; the weight shall be taken after any excessive sizing is removed by boiling or other suitable process.

The analyst at the local appraiser's office testified that he could ascertain the average number of the yarn in these fabrics if the board would point out a method to be followed which would be in accordance with the provisions of the statute. It appears from the record, however, that in the past he has been able to ascertain the average number of the yarn in such materials by some method, for part of the record in the case of United States *v.* Ikle Frères (suit 1486) was incorporated in this record, and it shows that the analyst actually did find the average number of the yarn in swivel-thread goods in that case. No testimony was introduced showing what method he pursued, however.

Following our ruling in the case of P. K. Wilson & Son, *supra,* we hold that the merchandise in question is the cotton cloth of the statute, and that the second method suggested by the importers is the proper method for ascertaining the average yarn number of the cloth in question; that is, by measuring the swivel threads, which are clipped threads, "as if continuous" and extending the full length of the fabric, "the distance covered by it (them) in the cloth in the condition as imported," separating the ply threads into singles and the count taken of the total singles, and weighing the cloth "after excessive sizing is removed by boiling or other suitable process."

Four samples of the merchandise in question were offered at the trial, and we find from the testimony that the average number of the yarn in the merchandise invoiced as items 201 and 202 exceeds 79 but does not exceed 99, and that the average number of the yarn in the merchandise invoiced as items 44 and 800 exceeds 59 but does not exceed 79, and we hold said merchandise dutiable at the appropriate rate under paragraph 252. To that extent the protests are sustained.

(T. D. 36387—G. A. 7905.)

Stuffed olives.

Green olives, stuffed with sweet red pepper and imported in barrels or hogsheads, are dutiable under the specific provision for "olives" in paragraph 218, tariff act of 1913.

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United States General Appraisers, New York, May 5, 1916.

In the matter of protests 772255, etc., of John Magee & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Hatch & Clute (*Walter F. Welch* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers.)

WAITE, *General Appraiser:* The merchandise in question in these cases is described in the invoices as stuffed olives. They are generally spoken of as such in the trade. They were assessed for duty under paragraph 218, tariff act of 1913, the Government claiming they are provided for in the following language of that paragraph:

218. * * * Olives, 15 cents per gallon.

The importers protest against the classification as olives, and claim they are dutiable under paragraph 217 as "edible fruits prepared in any manner, 1 cent per pound," or free of duty under paragraph 488, which is in the following language:

488. Fruits or berries, green, ripe, or dried, and fruits in brine, not specially provided for in this section.

There is also claim for 5 per cent discount under the provisions of section 4, paragraph J, subsection 7. No testimony was given on this claim. It is therefore overruled.

The goods in question, sample of which was introduced in evidence, are green olives the pit from which has been extracted and the space filled with a piece of sweet red pepper, after which the olives are immersed in brine and shipped into this country in barrels or hogsheads. Their use is the same as that of the ordinary olive.

Stuffed olives have been known in the trade and commerce of the United States for a number of years. The Treasury Department in 1873 held that stuffed olives were to be classified as olives, prepared (T. D. 1611).

The same commodity was before the board in the case of Reid, Murdoch & Co., G. A. 6235 (T. D. 26921), in which decision it was recited that "the goods are the familiar relish, consisting of olives stuffed with sweet peppers." They were assessed for duty under the provision in paragraph 241, tariff act of 1897, for "all vegetables, prepared or preserved, including pickles and sauces of all kinds." They were held by the board to be dutiable as prepared olives under the specific provision therefor in paragraph 264, which read, "olives, green or prepared."

The case of Sprague, Warner & Co., Abstract 10642 (T. D. 27244), also arose under the law of 1897, and the board held that the stuffed olives in question were properly dutiable under paragraph 264 as prepared olives.

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In preparing or stuffing these olives the first operation is to remove the pit. This is done by some instrument, and in so doing some of the olives are broken or cracked along the sides, and are therefore unfitted for the further operation of stuffing. These broken pitted olives came before the board in the case of Austin, Nichols & Co., Abstract 31634 (T. D. 33263), and were held to be properly dutiable under the specific provision for "olives" in paragraph 275, tariff act of 1909.

The provision in the law of 1909 for olives, paragraph 275, was changed somewhat from the corresponding provision of the law of 1897, paragraph 264. The two provisions read as follows:

264. * * * Olives, green or prepared, in bottles, jars, or similar packages, 25 cents per gallon; in casks or otherwise than in bottles, jars, or similar packages, 15 cents per gallon.

275. * * * Olives, in bottles, jars, kegs, tins, or other packages, containing less than 5 gallons each, 25 cents per gallon; otherwise 15 cents per gallon.

It will be noted that the law of 1909 did not contain the words "green or prepared" which appeared in the law of 1897. In the case of Arguimbau & Ramee, Abstract 24960 (T. D. 31352), the board held that the provision in paragraph 275, act of 1909, for "olives," without limiting words of description, was broad enough to include ripe olives in brine which had, under the law of 1897, been classified as fruits in brine. Note also to the same effect Goussios & Co. *v.* United States (2 Ct. Cust. Appls., 317; T. D. 32051).

The provision for olives in the law of 1913, under which the importations here in question were made, is the same as it was in the law of 1909—that is, it provides for "olives" without accompanying description or limitation. We think, therefore, the term is all-inclusive, so far as olives are concerned, and the protest should be decided upon the principle laid down in the soya-bean case (Brown *v.* United States, 6 Ct. Cust. Appls., 415; T. D. 35977), where it was held that the provision for "soya beans" included the soya bean even though it had been prepared by cooking and putting in jars.

It is unnecessary to discuss the other claims made in the protests, as we are satisfied that the classification made by the collector is right. The protests are therefore overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, MAY 2, 1916.

No. 39658.—Protest 739334 of Manhattan Bead Chain Co. (New York).

PYROXYLIN BRACELETS—TOYS.—Pyroxylin bracelets classified as manufactures of pyroxylin at 40 per cent ad valorem under paragraph 25, tariff act of 1913, are claimed dutiable as toys at 35 per cent under paragraph 342.

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Opinion by SULLIVAN, G. A. The bracelets in question were held properly classified as manufactures of pyroxylin under paragraph 25.

No. 39654.—Protest 772451 of C. J. Tower (Buffalo).

COAL-TAR COLORS.—Merchandise classified as a coal-tar color or dye at 30 per cent ad valorem under paragraph 20, tariff act of 1913, is claimed to be free of duty as alizarin under paragraph 394.

Opinion by BROWN, G. A. Protest unsupported; overruled.

BEFORE BOARD 2, MAY 2, 1916.

No. 39655.—Protest 792703 of American Express Co. (Boston).

WHITE KID SHOES—EMBROIDERED WEARING APPAREL.—Certain embroidered white kid shoes classified as embroidered wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed free of duty as boots or shoes made wholly or in chief value of leather under paragraph 530 or dutiable at 30 per cent under paragraph 360.

Opinion by COOPER, G. A. On the authority of G. A. 7644 (T. D. 34930) the shoes in question were held properly classified under paragraph 358.

No. 39656.—Protest 771452 of F. B. Vandegrift & Co. (New York).

WEARING APPAREL IN CHIEF VALUE OF SPANGLES.—Women's belts composed of silk and made in part of silk ornaments, and tunics composed of cotton net and spangles, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as silk wearing apparel at 50 per cent under paragraph 317, or as articles composed wholly or in chief value of spangles under paragraph 333.

Opinion by COOPER, G. A. On the authority of G. A. 7597 (T. D. 34755) the belts were held dutiable as silk wearing apparel under paragraph 317. The tunics were held dutiable under paragraph 333. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

No. 39657.—Protests 770259, etc., of F. B. Vandegrift & Co. et al. (New York).

WEARING APPAREL IN PART OF TUCKINGS.—Shirts, shirt bosoms, and blouses, some made from tuckings and others from flutings, and blouses, robes, and other articles of wearing apparel composed of silk and made in part of nettings, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as cotton or silk wearing apparel under paragraph 256 or 317.

Opinion by COOPER, G. A. On the authority of G. A. 7597 (T. D. 34755) and G. A. 7613 (T. D. 34823) the tucked and fluted shirts, shirt bosoms, and blouses were held dutiable as cotton wearing apparel at 30 per cent under paragraph 256, and the silk blouses, robes, and other articles of wearing apparel composed in part of netting were held dutiable under paragraph 317, as claimed.

No. 39658.—Protest 769679 of F. B. Vandegrift & Co. (New York).

WEARING APPAREL IN PART OF BRAID.—Dressing gowns composed of cotton and ornamented with braid, and tucked shirts, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as cotton wearing apparel at 30 per cent under paragraph 256.

Opinion by COOPER, G. A. The merchandise in question was held dutiable under paragraph 256, as claimed. G. A. 7597 (T. D. 34755) and G. A. 7613 (T. D. 34823) followed.

No. 39659.—Protest 790499 of F. B. Vandegrift & Co. (Philadelphia).

COTTON AND ARTIFICIAL SILK FABRICS.—Woven fabrics of cotton and artificial silk classified as manufactures of cotton at 30 per cent ad valorem under paragraph 266, tariff act of 1913, are claimed dutiable as cotton cloth under paragraph 252.

Opinion by COOPER, G. A. The fabrics in question were held dutiable as manufactures of cotton under paragraph 266. Protest overruled. Abstract 38096 followed.

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No. 39660.—Protest 786976 of Abdul Rubb Mollah (Philadelphia).

DRAWNWORK HANDKERCHIEFS.—Cotton hemstitched handkerchiefs decorated with four rows of drawnwork, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as handkerchiefs of cotton at 30 per cent under paragraph 255.

Opinion by COOPER, G. A. On the authority of G. A. 7769 (T. D. 35675) the articles in question were held more specifically provided for as hemstitched handkerchiefs under paragraph 255, as claimed.

No. 39661.—Protest 512864 of O. G. Hempstead & Son (New York).

DRAWNWORK ARTICLES.—Doilies, covers, scarfs, etc., ornamented with drawnwork or finished with scalloped edges, classified at 60 per cent ad valorem under paragraph 349, tariff act of 1909, are claimed dutiable as manufactures of cotton at 45 per cent under paragraph 332, or as manufactures of flax under paragraph 358.

Opinion by COOPER, G. A. On the authority of Frank *v.* United States (5 Ct. Cust. Appls., 273; T. D. 34469), affirming G. A. 7445 (T. D. 33262), the protest was overruled.

No. 39662.—Protest 786215 of Strawbridge & Clothier (Philadelphia).

COTTON TABLE DAMASK.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton table damask at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. The table damask in question was held dutiable under paragraph 263, as claimed. G. A. 7630 (T. D. 34903) followed.

No. 39663.—Protest 766024 of Ely & Walker Dry Goods Co. (St. Louis).

COTTON TABLE DAMASK.—Certain cotton turkey red and white table covers classified as Jacquard figured upholstery goods at 35 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable as cotton table damask at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. The table covers in question were held dutiable as cotton table damask under paragraph 263, as claimed. G. A. 7780 (T. D. 35724) followed.

No. 39664.—Protests 777987, etc., of Knauth, Nachod & Kuhne (New York).

COTTON TURKISH TOWELS AND BATH MATS.—Towels and bath mats classified as cotton pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. Following G. A. 7656 (T. D. 35019) the board held that the Turkish towels and bath mats in question are dutiable under paragraph 264, as claimed.

No. 39665.—Protest 776245 of R. H. Macy & Co. (New York).

FLAX FABRICS, PLAIN WOVEN.—Merchandise classified as manufactures of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, is claimed dutiable as plain woven fabrics at 30 per cent under paragraph 283.

Opinion by COOPER, G. A. Certain of the fabrics were found to be plain woven and held dutiable under paragraph 283, as claimed.

No. 39666.—Protests 772888, etc., of Stone & Downer Co. et al. (Boston).

CASEMENT CLOTH—UNION FABRICS.—Merchandise invoiced as casement cloth consisting of fabrics composed of cotton and jute, cotton chief value, classified as Jacquard figured upholstery goods at 35 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as manufactures of cotton at 30 per cent under paragraph 266.

Opinion by COOPER, G. A. It was found that the casement cloth in question was not made on the Jacquard loom. As it is a union fabric composed in chief value of cotton it was held dutiable as manufactures of cotton under paragraph 266, as claimed.

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BEFORE BOARD 1, MAY 4, 1916.

No. 39667.—Protests 765729, etc., of Frederick H. Griffin (Boston).

RADIOLOGY SCREENS—PYROXYLIN ARTICLES.—Screens used in X-ray photography, classified as articles in chief value of pyroxylin at 40 per cent ad valorem under paragraph 25, and as coated paper not specially provided for at 35 per cent under paragraph 324, tariff act of 1913, are claimed dutiable as a chemical mixture at 15 per cent under paragraph 5, or as a nonenumerated manufactured article at 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. It was not established by the evidence that the component material was neither celluloid nor paper. Protests overruled

No. 39668.—Protests 765443-55204, etc., of Sears, Roebuck & Co. (Chicago).

READING GLASSES—MICROSCOPES—TELESCOPES—OPTICAL INSTRUMENTS.—Reading glasses and telescopes and clamps classified as optical instruments and field glasses at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopic lenses or telescopes under paragraph 94, or as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. Protests overruled as to the reading glasses. Certain items were found to be telescopes and clamps for telescopes. They were held dutiable at 25 per cent under paragraph 94. Protests overruled as to the clamps for telescopes, the correct claim not having been made.

No. 39669.—Protests 758895, etc., of Semon Bache & Co. (Seattle).

POLISHED CYLINDER GLASS.—The glass here in question is cast polished plate glass, silvered, classified under paragraphs 88 and 89, tariff act of 1913. It is claimed dutiable at lower rates under paragraphs 86, 89, and 90.

Opinion by SULLIVAN, G. A. It was established that the merchandise is polished cylinder glass. It was held dutiable under paragraphs 86 and 89 and subject to a 4 per cent additional duty under paragraph 90.

No. 39670.—Protests 750414, etc., of Rothschild Bros. & Co. (New York).

DRESS BUTTONS.—Metal dress buttons classified under paragraph 356, tariff act of 1913, are claimed dutiable as metal buttons at 15 per cent under paragraph 151, or as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7805 (T. D. 35849) the merchandise was held properly classified as dress buttons under paragraph 356.

No. 39671.—Protest 771453 of Wm. Wiese & Co. (New York).

WOOL LACES—AUTOMOBILE LACES.—Merchandise returned by the appraiser as automobile laces or trimmings was classified under paragraph 383, tariff act of 1909, and is claimed dutiable at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by BROWN, G. A. It was found that the provision for automobile laces in paragraph 358, tariff act of 1913, is more specific than the provision for laces and trimmings of wool in paragraph 383, tariff act of 1909. Protest sustained. G. A. 7577 (T. D. 34599) and G. A. 7578 (T. D. 34600) followed.

No. 39672.—Protests 784269, etc., of Arnold, Constable & Co. (New York).

RUGS.—Merchandise classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, is claimed dutiable as carpets or rugs of cotton under paragraph 302, or under paragraphs 294 to 299.

Opinion by BROWN, G. A. Protests unsupported; overruled.

No. 39673.—Protest 769710 of Surpass Leather Co. (New York).

CASHMERE GOAT HAIR.—The appraiser reports that the merchandise "consists of Cashmere goat hair, the fleece of which is of like kind with the fleece of the Angora goat." It was classified at 15 per cent ad valorem under paragraph 305, tariff act of 1913, and is claimed free of duty as hair of other animals under paragraph 503, or as wool under paragraph 650.

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Opinion by BROWN, G. A. It was found that the merchandise consists of the hair of the Cashmere goat and that it is similar to the hair of the Angora goat. The provision in paragraph 305 was held to control over the general provision for wool in paragraph 650.

No. 39674.—Protest 745751 of W. B. Hutchinson & Co. (Seattle).

WATERPROOF RAINCOATS.—Waterproof coats classified as wearing apparel in part of wool, under paragraph 382, tariff act of 1909, are claimed dutiable as wearing apparel in chief value of cotton at 30 per cent under paragraph 256, tariff act of 1913.

Opinion by BROWN, G. A. On the authority of G. A. 7578 (T. D. 34600) and Hecht *v.* United States (5 Ct. Cust. Appls., 261; T. D. 34444) the provision in paragraph 382, tariff act of 1909, for wearing apparel in part of wool was held more specific. Protest overruled.

BEFORE BOARD 2, MAY 4, 1916.

No. 39675.—Protests 786683, etc., of Happel & McAvoy et al. (New York).

FORCEPS.—Forceps classified under the provision for nippers and pliers in paragraph 166, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the authority of Koch *v.* United States (6 Ct. Cust. Appls., 534; T. D. 36148) the forceps in question were held dutiable as manufactures of metal under paragraph 167, as claimed.

No. 39676.—Protests 769819, etc., of Adams Express Co. (New York).

"EVERYMAN'S LIBRARY"—BOOKS.—Certain volumes of the series of books known as "Everyman's Library," classified at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry as textbooks under paragraph 426.

Opinion by FISCHER, G. A. On the authority of Dutton *v.* United States (6 Ct. Cust. Appls., 460; T. D. 35987), affirming G. A. 7692 (T. D. 35170), the "Everyman's Library" was held properly classified under paragraph 329.

No. 39677.—Protests 561955, etc., of Pratt & Farmer Co. et al., and protests 661528, etc., of A. J. Hague & Co. et al. (New York and Philadelphia).

SILK HAIR NETS.—Silk hair nets classified at 70 per cent ad valorem under paragraph 350, tariff act of 1909, are claimed not to have been made on the Lever or Gothrough machine, dutiable at 60 per cent under paragraph 402.

Opinions by HOWELL, G. A. It was not shown by competent proof that the hair nets in question were not made on the Lever or Gothrough machine. Protests overruled.

No. 39678.—Protest 750692 of Spielmann & Co. (New York).

SCARFS—SILK WEARING APPAREL.—Ladies' silk scarfs classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. Certain of the scarfs are made in part of ornaments and others are not embroidered or appliquéd or lace trimmed. They were held dutiable as silk wearing apparel under paragraph 317, as claimed. United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), followed.

No. 39679.—Protests 756331–50085, etc., of Marshall Field & Co. (Chicago).

SILK WEARING APPAREL.—Articles of wearing apparel classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 317, or at 35 per cent under paragraph 291.

Opinion by HOWELL, G. A. Certain items found to be silk chief value were held dutiable under paragraph 317, and others composed chiefly of wool were held dutiable as wool wearing apparel under paragraph 291.

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No. 39680.—Protest 735613 of Rosenthal-Sloan Millinery Co. (St. Louis).

SILK TRIMMINGS.—This protest is against the classification of silk trimmings at 60 per cent ad valorem under paragraph 402, tariff act of 1909.

Opinion by HOWELL, G. A. Protest unsupported; overruled.

No. 39681.—Protest 765438-53259 of Marshall Field & Co. (Chicago).

SPANGLED TRIMMINGS.—Trimmings returned by the appraiser as composed in chief value of spangles and in part of netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) the trimmings in question were held dutiable under paragraph 333, as claimed.

No. 39682.—Protests 771206, etc., of Wells, Fargo & Co. et al. (New York).

EMBROIDERIES—LACES.—The goods in question are embroideries and other articles classified under various provisions of the tariff act of 1913.

Opinion by HOWELL, G. A. Protests unsupported; overruled.

No. 39683.—Protest 787158 of A. W. Fenton, jr. (Cleveland).

FUR WEARING APPAREL WITH SILK ORNAMENTS.—A fur neck piece lined with silk and upon which two silk ornaments in the form of roses are attached by stitching, classified as appliquéd wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as fur wearing apparel at 50 per cent under paragraph 348, or as silk wearing apparel at the same rate under paragraph 317.

Opinion by COOPER, G. A. The silk ornaments in question were made by rolling up a small piece of the silk lining, and the value is infinitesimal as compared with the value of the balance of the article. On the authority of United States *v.* Hamburger (5 Ct. Cust. Appls., 217; T. D. 34382), affirming G. A. 7525 (T. D. 34087), the merchandise was found not to be appliquéd. It was held dutiable as fur wearing apparel under paragraph 348.

No. 39684.—Protest 782302 of A. H. Ringk & Co. (New York).

STEEL WIRE ROPE, HEMP COVERED.—Rope made of several strands, each strand consisting of a single wire wound with a heavy covering of hemp, classified as a manufacture of hemp at 35 per cent ad valorem under paragraph 284, tariff act of 1913, is claimed dutiable as cables or cordage under paragraph 268.

Opinion by COOPER, G. A. On the authority of Abstract 38558 covering similar merchandise, protest overruled.

No. 39685.—Protests 763508, etc., of M. H. Rogers (New York).

COTTON VELVET COVERS.—Velvet table and couch covers classified as articles made or cut from plushes, velvets, etc., at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

Opinion by COOPER, G. A. The covers in question were held dutiable under paragraph 258, as claimed. Downing *v.* United States (6 Ct. Cust. Appls., 447; T. D. 35984) followed.

No. 39686.—Protests 754758, etc., of Ashworth Bros. (Boston).

RUBBER-FACED CARD CLOTH.—Rubber-faced card cloth classified as cotton chief value at 30 per cent ad valorem under paragraph 266, tariff act of 1913, is claimed to be in chief value of rubber, dutiable at 10 per cent under paragraph 368.

Opinion by COOPER, G. A. Some of the cloth is composed of two layers of cotton cloth, one layer of cloth made of cotton and linen, and one layer of sheet rubber, and the balance is composed of three layers of cotton cloth, one layer of cloth made of cotton and linen and one layer of sheet rubber, all cemented together with rubber

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cement. From the evidence it was found that rubber is the component material of chief value in both the three and four-ply fabrics. It was held dutiable under paragraph 368. Abstract 39316 cited

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(T. D. 36388.)

Triangles—Musical instruments.

UNITED STATES *v.* SEARS, ROEBUCK & CO. (No. 1662).

1. MUSICAL INSTRUMENT.

It is no part of the definition of a musical instrument that it can be used to produce a continuous melody and that a chromatic scale can be played upon it.

2. TRIANGLES ARE MUSICAL INSTRUMENTS.

A metal triangle, with a wooden-handled hammer or striker, is dutiable as a musical instrument under paragraph 373, tariff act of 1913, and not as composed wholly or in chief value of iron, steel, or other metal under paragraph 167.

United States Court of Customs Appeals, May 1, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38904.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Frank P. Wilson*, special attorney, of counsel), for the United States.

Submitted on record by apellee.

[Oral argument April 11, 1916, by Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The appraiser in his answer to the protest in this case described the merchandise as metal triangles, used in orchestras, catalogued and sold as musical instruments, and commercially known as musical instruments. The exhibit consists of two parts, a metal triangle and a metal hammer, or striker, having a wooden handle. The protestant claimed the articles to be dutiable as articles or works composed wholly or in chief value of iron, steel, or other metal under paragraph 167, of the tariff act of 1913. The sole question in the case is whether the article imported is a musical instrument under paragraph 373. The Board of General Appraisers sustained the protest, and the Government appeals.

There was no proof offered of commercial designation. One witness only was called by the importer. The material part of his testimony was as follows:

Q. Will you define a musical instrument?—A. A musical instrument ought to be an instrument upon which a chromatic scale can be played.

Q. Is this such an instrument?—A. No.

Q. (By Mr. LAWRENCE.) Under your definition, I presume a drum is not a musical instrument?—A. It should not be.

Q. Is it?—A. It is not.

Q. In your opinion, it is not?—A. In my opinion, it is not.

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Q. In your opinion, there are many things, I presume, used in orchestras in the execution of certain musical compositions which are not musical instruments?—A. Correct.

Q. Name some of them?—A. Drums, bells, castanets, triangles, duck calls, bird whistles, sand blocks, imitation for trains, gongs, and things of that kind.

Q. Cymbal?—A. Cymbal.

Q. Mostly carried by dealers in musical instruments, I presume?—A. Yes.

Q. Take this article here, this triangle; that produces one particular note, does it not?—A. Produces one sound.

* * * * * * *

Q. Is it not true that this instrument is used in the execution of certain pieces of music as an essential part of the orchestra?—A. Yes.

Q. That is practically the only place they are used, in the orchestra?—A. Orchestra or band, a very large band would have a large-sized triangle.

It is apparent that this witness was attempting to give, not a commercial designation of a musical instrument but his own idea of what the term in ordinary parlance signifies. Or it would be perhaps more accurate to state that he was trying to establish a test of his own, which is unfortunately at variance with the definitions given by lexicographers and with the ordinary understanding of the term. It would, we apprehend, be news to most people to be told that a drum is not a musical instrument. Certainly the board and the courts have repeatedly assumed that drums are musical instruments. In numerous cases the question has been raised as to whether drumheads are parts of musical instruments, and in a number of these cases the question has been answered in the affirmative. See cases collected in United States *v.* Lyon & Healy (4 Ct. Cust. Appls., 84; T. D. 33366). In none of these cases does it appear that any contention was made that a drum is not a musical instrument, although such a contention, if sound, would have called for a different conclusion than that reached by the board or the court in the case considered.

In Chambers' Encyclopædia, published in 1875, under the title of music, it is said:

Musical instruments are classified as string instruments, wind instruments, and instruments of percussion. * * * Instruments of percussion are such as the drum, kettledrum, cymbals, etc.

And, so far as we have been able to discover, this classification of musical instruments has persisted in the encyclopædias and dictionaries to this date.

The New International Encyclopædia thus defines musical instruments:

Musical instruments are generally divided into four large groups, according to the manner in which the sound is produced, viz: (1) Stringed instruments, (2) wind instruments, (3) instruments of percussion, (d) keyed instruments. * * *

The instruments of percussion may be divided into two principal classes: (A) Those which have definite pitch; (B) those which have not. The former class comprises (1) the kettledrums, (2) the glockenspiel, (3) the zylophone. The latter class includes (1) the bass drum, (2) the sma l drums, (3) the tambourine, (4) the tamtam, (5) the cymbals, (6) the triangle, (7) the castanets.

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In the Oxford Dictionary, under the title "instrument," subdivision 3 is given the definition:

A contrivance for producing musical sounds by the vibration of some solid material (as strings, reeds, rods, membranes, etc.) or of a body of air in the pipe or tube. Musical instruments are commonly classified as wind instruments, stringed instruments, and instruments of percussion.

In Webster's International Dictionary, under the title "instruments," subdivision 3, it is said:

A contrivance by which musical sounds are produced. Musical instruments may be classified, according to the nature of the vibrating body that initiates the sound, as stringed, wind, and those sounded by a vibratory surface. * * * Instruments sounded by a vibratory surface may be subdivided according as the tone-producing surface is a membrane, as in drums; a plate, as a cymbal or bell; or a rod or blade, as a triangle or organ reed.

And under the heading "triangle":

2. Music. An instrument of percussion. * * *

The Century Dictionary and Encyclopædia defines triangle:

A musical instrument of percussion made of a rod of polished steel bent into the form of a triangle, and open at one of its angles. It is sounded by being struck with a small steel rod. It is frequently used in modern orchestral music for brilliant and sparkling effects.

In the Encyclopædia Britannica (11th ed., Vol. XXVII, p. 258) appears the following:

Triangle, in music, an instrument of percussion of indefinite musical pitch, consisting of a triangular rod of steel, open and slightly curved at one corner. The triangle, suspended by a loop, is played by means of a steel stick with a wooden handle. Varied rythmical effects and different grades of forte and piano can be obtained. A sort of tremolo or roll can be produced by striking each end of the triangle alternately in rapid succession. When the triangle is scored for on a separate staff, the treble clef is used, but it is more often included with the bass drum on the bass stave. The tone of the triangle is clear and ringing, but it should have no definite pitch. The small triangles are the best. Beethoven, Mozart, Weber, and other great masters employed the instrument.

The test applied by the board would apparently restrict the term "musical instrument" to an instrument which would produce a continuous melody. Of the triangle it was said:

The testimony shows that it is used in orchestras or bands, "and used mostly as drummers' traps"; that it produces a harmonious sound, but could not be used to produce a continuous melody, and that a chromatic scale could not be played upon it. Of itself it is evident that this article is not a musical instrument.

We think the board took too narrow a view of the term "musical instrument" as it is ordinarily employed. As we have seen, lexicographic definitions are not in accord with the view expressed.

The decision of the board is *reversed*, and the assessment of the collector affirmed.

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(T. D. 36389.)

Malt extract.

UNITED STATES *v.* BRITT, LOEFFLER & WEIL (No. 1660).

1. CONSTRUCTION—KNOWLEDGE OF ADMINISTRATIVE AND JUDICIAL INTERPRETATIONS IMPUTED TO CONGRESS.

Congress, in using the expression "solid or condensed" as applied to malt extract, paragraph 246, tariff act of 1913, must be presumed to have known that it had been administratively and judicially interpreted under successive prior tariff acts to mean solid only.

2. CONSTRUCTION—CERTAINTY AND DEFINITENESS FAVORED.

To hold that the expressions "fluid" and "solid or condensed," in paragraph 246, tariff act of 1913, describe malt extract in three states of density would make it impossible to determine what degree of concentration would transform it from the fluid to the condensed state.

3. CONSTRUCTION—DOUBT FAVORS IMPORTER.

If there is any doubt as to whether or not "solid or condensed," paragraph 246, tariff act of 1913, means solid only, the doubt should be resolved in favor of the importer by holding that it does.

4. CONCENTRATED FLUID MALT EXTRACT, HOW DUTIABLE.

Malt extract of the consistency of thick molasses is dutiable as fluid, and not condensed, malt extract under paragraph 246, tariff act of 1913.

United States Court of Customs Appeals, May 1, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7814 (T. D. 35896). [Affirmed.]

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney, of counsel), for the United States.

Allan R. Brown for appellees.

[Oral argument April 12, 1916, by Mr. Hanson and Mr. Brown.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise in this case is malt extract imported in bottles. It is invoiced as "Loeflund's Malt Extract," and the bottle containing the same is so labeled. It is composed, as shown by the chemist's report, of 85.70 per cent solids and 14.30 per cent water. The question is whether it is dutiable at 45 cents per gallon as fluid malt extract, as claimed by the importers and held by the Board of General Appraisers, or at 45 per cent ad valorem as condensed malt extract, as assessed by the collector and claimed by the Government under paragraph 246 of the act of 1913, which reads as follows:

246. Malt extract, fluid, in casks, 23 cents per gallon; in bottles or jugs, 45 cents per gallon; solid or condensed, 45 per centum ad valorem.

More succinctly stated, the question is whether the merchandise is malt extract fluid or malt extract condensed within the meaning of the paragraph.

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The official exhibit, which has been submitted to the court, shows the sample to be a thick, reddish-brown substance, apparently of about the consistency of molasses.

Excepting as to the rates of duty provided therein, the acts of 1890, 1897, and 1909 have contained paragraphs identical with the one above quoted, and the act of 1894 was likewise identical, except that after the words "malt extract" the words "including all preparations bearing the name and commercially known as such" were inserted.

As somewhat typical, and as in substance conveying the same meaning, we quote the applicable definitions of the word "fluid" used as an adjective and as a noun from the Standard and Century dictionaries:

Standard Dictionary:

Fluid, *a.*, 1. Composed of particles that move over one another without apparent resistance; capable of flowing; liquid or gaseous; as, the fluid parts of a substance; a fluid body. 2. (Rare) flowing.

Fluid, *n.*, 1. A substance that, like water or air, yields to any force, however small, that tends to change its form; a liquid (inelastic fluid) or gas (elastic fluid); in common language, always, a fluid.

Century Dictionary:

Fluid, *a.*, 1. Capable of flowing; liquid or gaseous; consisting of a substance incapable of resisting forces (tangential stresses) tending to change its shape. 2. Not fixed or rigid; flowing.

Fluid, *n.*, 1. A substance which flows or is capable of flowing; a substance which is incapable of resisting forces (tangential stresses) tending to change its shape without altering its size.

"Condensed" is of course the participial form of the verb "condense" (used as an adjective), which by the same authorities is defined in substance as, to bring into a smaller, denser state; reduce the bulk of; compress; consolidate; as, to condense milk by evaporation.

Manifestly this substance, which will flow with rapidity very like that of thick molasses, may be held to be a fluid. It may, and does, flow very slowly, yields to very slight force, and if no force is applied will in a short time accommodate itself wholly to the form and shape of any container in which it may be placed. To say that it is not a fluid at once involves the difficulty of determining what degree of fluidity—that is, the capacity of the particles of the substance to move freely upon one another—is requisite to establish the dividing line between fluids and nonfluids, and admits also the proposition that not all substances that flow are fluids. We do not care to assume a position fraught with so great difficulties.

The Government's contention, however, is that this paragraph provides for three things—namely, (1) a fluid malt extract, (2) a solid malt extract, and (3) a condensed malt extract, under which

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last division it claims the merchandise here must be classified, and in this connection suggests that "condensed" is used in the sense of concentrated.

Upon this question it may be of assistance to examine the few authorities which have been called to our attention. Under the act of 1890, in G. A. 2076 (T. D. 13971), the board had before it an extract of malt resembling honey in consistency. It held that it was not solid, and that while it was concentrated malt extract it was not in its opinion condensed in view of the fact that in the paragraph condensed malt extract was contrasted with fluid malt extract.

In United States *v.* Eisner (59 Fed., 352, Circuit Court of Appeals for the Second Circuit) an article made by secret formula of many ingredients, only 12 per cent of which was actually malt extract, but which was commercially known as a malt extract, had been assessed as fluid malt extract under the act of 1890 and was claimed by the importer to be dutiable as a medicinal proprietary preparation. We quote from the opinion:

> In view of the fact that there were known to trade so many different varieties of malt extract, bought and sold as such, some with the maker's or proprietor's name and some without, some dry, some condensed, some semifluid or semisolid (thicker than ordinary molasses, as one of the witnesses describes it), and some fluid, and of the further facts that different rates of duty had been from time to time assessed upon it under Treasury rulings, and that both proprietary and nonproprietary malt extracts are manufactured in this country, it seems reasonable to infer that when Congress imposed a duty upon malt extract, if fluid and in casks, at 20 cents a gallon; if fluid and in bottles or jugs, at 40 cents a gallon; and, if solid or condensed, at 40 per cent ad valorem—it intended to cover all the known kinds of malt extract in all the known conditions in which it is imported. Certainly the language used in the tariff act, construed according to the ordinary rules of interpretation, supports such conclusion.

The decision below reversing the board was itself reversed and the classification of the merchandise as a fluid malt extract affirmed.

The board, in G. A. 7325 (T. D. 32269), had before it a substance which had been assessed as malt extract, solid or condensed, under the act of 1909, and was among other things claimed to be dutiable as fluid malt extract. It contained from 19 to 20 per cent of water and was held to be dutiable as claimed by the importers. In the opinion the board said, "the words 'solid or condensed' are in our judgment interchangeable terms and are intended to mean the same thing." There does not appear to have been any appeal from this decision and it appears to have stood as the interpretation of the act of 1909. It was rendered before the present law was enacted.

The language of the paragraph is hardly apt to convey the meaning ascribed thereto by the Government, and the importer is entitled to the benefit of the doubt as to its meaning, if doubt there be.

The record here clearly shows that commodities sold under the name of malt extract vary greatly in the degree of fluidity possessed

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by them and that all probably are in fact more or less concentrated. In view, however, of the interpretation heretofore given to the same language in earlier paragraphs we do not feel warranted upon this record to disagree with the board in its conclusion. It well says, "if the term 'solid or condensed' is to include all condensations of fluid extract, as well as the solid, there will be no field for the operation of the first part of the paragraph."

Congress is presumed to have known the interpretation accorded to the prior statutes in identical language, and if at the time of the enactment of the tariff law of 1913 it desired a different construction to be placed thereon it was easy to have secured the same by appropriate change in the language.

The judgment of the Board of General Appraisers is *affirmed.*

(T. D. 36390.)

Immortelles, dyed.

BAYERSDORFER & CO. *v.* UNITED STATES (NO. 1669).

1. CONSTRUCTION, PARAGRAPH 347, TARIFF ACT OF 1913.

The expression "artificial and ornamental" as applied to flowers, paragraph 347, tariff act of 1913, is plain and unambiguous. A literal interpretation—giving the word "and" its proper conjunctive, and not a disjunctive, meaning—is not repugnant to the manifest legislative purpose and produces no absurd or unjust results. It means what it says, viz, that an article to be dutiable thereunder must be both artificial and ornamental.

2. CONSTRUCTION AIDED BY CONTEXT.

The use of the expression "artificial or ornamental feathers" in another part of the paragraph indicates that Congress carefully expressed a disjunctive meaning in one place and a conjunctive one in another.

3. CONSTRUCTION AIDED BY LEGISLATIVE HISTORY.

The specification, artificial *and* ornamental flowers, tariff acts of 1883, 1890, and 1894; the change to artificial *or* ornamental, tariff acts of 1897 and 1909; and the return to artificial *and* ornamental, tariff act of 1913, indicate that Congress has been discriminating in its use of the conjunctive and disjunctive.

4. CONSTRUCTION—CONGRESS LEGISLATES IN THE LIGHT OF ADMINISTRATIVE AND JUDICIAL INTERPRETATION.

Congress, when it passed the tariff act of 1913, must be presumed to have known that immortelles had been administratively and judicially classified otherwise than as artificial and ornamental flowers and could have written the paragraph to include them had it so desired.

5. IMMORTELLES, DRIED AND DYED, HOW DUTIABLE.

Dried and dyed immortelles are not dutiable as unenumerated articles under paragraph 385, or as artificial and ornamental flowers under paragraph 347, but are dutiable by similitude as preserved cut flowers under paragraph 210, tariff act of 1913.

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6. WREATHS OF DRIED AND DYED IMMORTELLES, HOW DUTIABLE.

Wreaths of dried and dyed immortelles, with straw frames, the frames being of minor value, are, by virtue of paragraph 386, which provides that certain mixed-material articles shall be assessed at the rate borne by the material of chief value, dutiable at the same rate as preserved cut flowers under paragraph 210, tariff act of 1913.

United States Court of Customs Appeals, May 1, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38953.

[Reversed.]

Walden & Webster (*Henry J. Webster* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence* and *Robert Hardison*, special attorneys, of counsel), for the United States.

Oral argument April 13, 1916, by Mr. Webster and Mr. Lawrence.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise is natural flowers (immortelles) dried and dyed, and wreaths composed of the same having a straw frame. As to both it is conceded they are ornamental but not artificial. Duty was assessed thereon at 60 per cent ad valorem under paragraph 347 of the tariff act of 1913 as ornamental flowers, and as wreaths wholly or in chief value thereof. This assessment was upheld by the Board of General Appraisers.

They were claimed by the importers to be dutiable under paragraph 210 as cut flowers, preserved or fresh, either directly or by similitude, or as unenumerated articles under paragraph 385, but in this court the importers chiefly rely upon paragraph 210.

The real question is whether the term "artificial and ornamental * * * flowers" in paragraph 347 requires flowers classifiable thereunder to be artificial *and* ornamental, the contention of the importers being that *both* characteristics are indispensable to such classification, while the Government insists that the word "and" is used in the sense of "or" and therefore that the possession of *either* of these characteristics is only requisite.

The relevant part of said paragraph 347 is as follows:

347. Feathers and downs, on the skin or otherwise, crude or not dressed, colored, or otherwise advanced or manufactured in any manner, not specially provided for in this section, 20 per centum ad valorem; when dressed, colored, or otherwise advanced or manufactured in any manner, and not suitable for use as millinery ornaments, including quilts of down, and manufactures of down, 40 per centum ad valorem; artificial or ornamental feathers suitable for use as millinery ornaments, artificial and ornamental fruits, grains, leaves, flowers, and stems or parts thereof, of whatever material composed, not specially provided for in this section, 60 per centum ad valorem; boas, boutonnieres, wreaths, and all articles not specially provided for in this section, composed wholly or in chief value of any of the feathers, flowers, leaves, or other material herein mentioned, 60 per centum ad valorem; * * *.

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It is at once obvious that unless the conjunctive "and" is read in the sense of the disjunctive "or" in the expression "artificial and ornamental fruits, * * * flowers," etc., as the Government claims, the grammatical construction sustains the importers' position, because the rule is well settled that the lawmaker is presumed to know the meaning of words and the rules of grammar and that a statute will be read and understood accordingly, unless it is apparent that something different was intended. United States *v.* Goldenberg (168 U. S., 95); Lewis's Sutherland Statutory Construction (sec. 408); United States *v.* Cohn (3 Ct. Cust. Appls., 273; T. D. 32571).

In determining whether something different was intended the context and purpose of the statute will be considered. If the result of a grammatical construction is repugnant to the manifest legislative purpose or produces absurd or unjust results, the strict grammatical sense may be modified, extended, or abridged as is found necessary to accomplish the clearly ascertainable legislative purpose. Lewis's Sutherland Statutory Construction (secs. 408 and 489 and cases cited); Hensel *v.* United States (3 Ct. Cust. Appls., 117; T. D. 32366); United States *v.* Palm, Fechteler & Co. (4 Ct. Cust. Appls., 1; T. D. 33195).

It has been judicially stated that—

> The popular use of "or" and "and" is so loose and so frequently inaccuarate that it has infected statutory enactments. While they are not treated as interchangeable, and should be followed when their accurate reading does not render the sense dubious. their strict meaning is more readily departed from than that of other words and one read in place of the other in deference to the meaning of the context.

See Lewis's Sutherland Statutory Construction (sec. 397 and cases cited); Endlich on Interpretation of Statutes (sec. 303); Words and Phrases Judicially Defined (West Publishing Co.), under "and" and "or," citations and discussion; Union Insurance Company *v.* United States (73 U. S., 759); Manson *v.* Dayton (153 Fed., 269).

> When the meaning is plain, the courts can not look to the statutes which have been revised to see if Congress erred in that revision, but may do so when necessary to construe doubtful language used in expressing the meaning of Congress.

United States *v.* Bowen (100 U. S., 508, 513); Arthur *v.* Dodge (101 U. S., 34); Vietor *v.* Arthur (104 U. S., 498); Bate Refrigerating Co. *v.* Sulzberger (157 U. S., 1, 33).

If the expression "artificial and ornamental fruits, grains, leaves, flowers, and stems, or parts thereof" in paragraph 347 be considered as if it were an entirely new enactment with no previous legislative or judicial history, we think it could not be fairly argued that the meaning was doubtful or ambiguous. Artificial *and* ornamental flowers without doubt grammatically clearly means flowers that are *both* artificial and ornamental. We can therefore only justify a

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holding that "and" means "or" by finding that the congressional purpose is not accomplished unless so interpreted.

The initial evidence of the legislative purpose is the paragraph itself. It provides (*a*) for feathers and downs, crude, not dressed, colored, or advanced or manufactured, and not specially provided for; (*b*) for the same if dressed, colored, or advanced or manufactured and not suitable for use as millinery ornaments; (*c*) for artificial *or* ornamental feathers suitable for use as millinery ornaments; (*d*) for artificial *and* ornamental fruits, grains, leaves, and flowers and stems or parts thereof, of whatever material composed; and (*e*) for boas, boutonnieres, wreaths, and all articles not specially provided for composed wholly or in chief value of any of the feathers, flowers, leaves, or other material mentioned in the paragraph.

It may be said that the paragraph seems to have been drafted with precision and with due regard to grammatical construction. The fact that the expression "artificial *and* ornamental" is immediately preceded by that of "artificial *or* ornamental" is indicative of this precision, as it was clearly thereby intended that *either* artificial *or* ornamental feathers suitable for use as millinery ornaments were to be classified thereunder. The described fruits, flowers, etc., were also to be there classified, whether or not suitable for use as such ornaments, and boas, boutonnieres, and wreaths made of either artificial or ornamental feathers or of the described fruits and flowers were to pay the same rate of duty as their component material. While this paragraph is often referred to as the millinery paragraph, it is evident upon careful examination that such ornaments are but a part, and perhaps a small part, of the merchandise covered thereby, for it is common knowledge that artificial and ornamental fruits, grains, leaves, flowers and stems, and articles made therefrom have other varied and large uses. So far as may be discovered from the paragraph itself, it is consistent with the legislative purpose therein expressed that "and" was designedly used in its grammatical sense. It is not suggested nor, indeed, does it appear that either absurd or unjust results would follow if it be given this interpretation, neither is it claimed, nor does it appear, that the consequences thereof are illogical or repugnant to other provisions of the statute.

The expression "of whatever material composed" is confirmatory of this view, as it would hardly be appropriate if natural flowers, leaves, grains, or fruits were intended to be classified thereunder.

The suggestion made by the Government that Congress was not asked to change *or* to *and* in the expression "artificial or ornamental" found in the preceding act, and later herein referred to, is not persuasive, because to adopt this line of reasoning might suggest doubts as to the accepted meaning of many statutory enactments.

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Assuming for the purposes of this opinion, however, that there is some reason why we should consider previous enactments *in pari materia* for the purpose of ascertaining the meaning of what does not seem ambiguous, we have examined prior tariff laws.

In the act of 1883, paragraph 429, provision was made for feathers of all kinds, dressed, colored, or manufactured, including dressed and finished birds for millinery ornaments, and "artificial and ornamental feathers and flowers, or parts thereof, of whatever material composed, for millinery use, not specially enumerated."

The act of 1890, paragraph 443, related to like feathers and downs of all kinds and birds suitable for millinery ornaments, and "artificial and ornamental feathers and flowers, or parts thereof, of whatever material composed, not specially provided for."

The act of 1894, paragraph 328, contained similar provision for feathers and downs and birds suitable for millinery ornaments, "and artificial and ornamental feathers, fruits, grains, leaves, flowers and stems, or parts thereof, of whatever material composed, suitable for millinery use, not specially provided for."

We pause here to note that the provisions of these three statutes were for "artificial *and* ornamental" articles, the earliest and the latest containing also the limitation "for millinery use" or suitable therefor, while that of 1890 omitted that provision.

The act of 1897, paragraph 425, as to feathers and downs, was of similar import and declared that "artificial or ornamental feathers, fruits, grains, leaves, flowers and stems or parts thereof, of whatever material composed" should be dutiable at the same rate as millinery ornaments without providing that they must be suitable for or used as such.

The act of 1909, paragraph 438, was identical as to rates of duty with paragraph 425 of the preceding act and in addition fixed the same rate of duty upon "boas, boutonnieres, wreaths, and all articles not specially provided for in this section composed wholly or in chief value of any of the feathers, flowers, leaves, or other materials or articles herein mentioned."

It is therefore to be observed that the three statutes first above mentioned contained the expression "artificial *and* ornamental" and that the two last above mentioned read "artificial *or* ornamental," and that the paragraph under consideration provides for "artificial *or* ornamental feathers, suitable for use as millinery ornaments" and omits this limitation as to fruits, grains, leaves, and flowers and stems or parts thereof, requiring them to be only artificial *and* ornamental.

As already suggested with reference to paragraph 347, the changes in the cognate paragraphs of the acts mentioned seem to indicate care and precision in the language selected, and do not suggest a loose and careless use thereof which has justified the courts in other

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cases as sometimes treating "and" and "or" as interchangeable. In other words, the change from "and" in the three statutes first mentioned to "or" in the two later ones seems to have been designedly made, and by the same token the adoption in paragraph 347 of the language of the earlier statutes seems equally premeditated and deliberate. Our attention has not been called to nor have we found any adjudication that may be said to have considered the precise question that is before us.

Under the act of 1883 the Treasury Department apparently held that natural immortelles undyed were entitled to free entry and that dyed immortelles were dutiable as flowers advanced in value (the dyeing being regarded as refining) under paragraph 94. This paragraph later (in 1890) seems to have become the crude-drug paragraph, but was not, in 1883, in terms limited to drugs. See T. D. 6090 and T. D. 7370.

Under the act of 1890 the following decisions were rendered by the Board of General Appraisers:

Dried flowers invoiced as immortelles, some of which had been bleached and others dyed, were held dutiable as articles in whole or in part manufactured under section 4. They were claimed to be entitled to free entry under the crude-drug paragraph. G. A. 977 (T. D. 12115).

In G. A. 1755 (T. D. 13375) yellow immortelles in a natural state, dyed immortelles but crude, dyed grasses, and heads and stalks of bearded wheat artificially bleached were under consideration. The three first-named articles were claimed to be entitled to free entry under paragraph 653 of the act, which provided for moss, seaweeds, and vegetable substances crude or unmanufactured, and the bleached wheat as a nonenumerated manufactured article under section 4. The board held that the dyed flowers and bleached heads and stalks of wheat were dutiable as manufactured articles under section 4, following T. D. 12115, last cited, and that the natural immortelles and crude dyed grasses were entitled to free entry, as claimed.

In G. A. 2109 (T. D. 14058), which was decided April 25, 1893, bunches and wreaths of natural flowers were the subject of importation. They had been assessed as unenumerated manufactured articles and claimed to be drugs. The assessment was sustained.

In G. A. 2562 (T. D. 14933), decided March 26, 1894, painted palm leaves and flowers and grasses dyed or otherwise manufactured were under consideration and held to be manufactured articles unenumerated. The board said that since the decision in G. A. 2109 (T. D. 14058) they had "in a corresponding manner decided quite a number of cases involving the same kind of goods. As far as we are aware, there has been no appeal from any of said decisions."

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Under paragraph 328 of the act of 1894, in G. A. 3014 (T. D. 15990), dried and dyed natural flowers (immortelles) were assessed as unenumerated articles wholly or partly manufactured. Relying upon their decision in T. D. 14058, *supra*, the board affirmed the assessment, the claim made being that they were dutiable as flowers under the drug paragraph.

Under the last-mentioned act, in G. A. 3214 (T. D. 16425), the board had before it crude ornamental feathers, not artificial, suitable for milliners' use and not dressed, colored, or manufactured. They were assessed for duty under paragraph 328 as ornamental feathers suitable for milliners' use and claimed to be entitled to free entry under paragraph 477, which related to feathers of all kinds not dressed, colored, or manufactured. In its opinion the board among other things said:

> In reaching this conclusion we are influenced by the fact that both the disjunctive "or" and the copulative conjunctive "and" are used in paragraph 328, which fact would indicate that Congress intended the language of that paragraph to be construed as it is grammatically expressed.

In support of its conclusion the case of *In re* Gribbons (55 Fed., 874) was cited, where the term "embroidered and hemstitched handkerchiefs" was held to include only such handkerchiefs as were both embroidered and hemstitched, the board saying in substance that the two cases were sufficiently analogous to warrant the holding that the term "artificial and ornamental feathers and flowers" included only such flowers and feathers as were both artificial and ornamental.

It should, however, be stated that in none of these cases, except the one last referred to, was the question discussed as to whether in the expression "artificial and ornamental" "and" was used in the sense of "or." That immortelles, natural or dyed, were dutiable thereunder does not, however, appear to have been suggested or claimed, and it would seem by reason of the board's quoted statement in T. D. 14933 that such immortelles had not been classified or claimed to be classifiable under paragraph 443 of the act of 1890, and that they were not classified under paragraph 328 of the act of 1894. It should also be observed that in T. D. 15990 the immortelles were found to be for florists' use.

Following the changed construction in the act of 1897 from "and" to "or," dyed immortelles were under that act and the act of 1909 classified as ornamental flowers. See *In re* Beckert, Abstract 25349 (T. D. 31524), where the natural dried immortelles were held dutiable as cut flowers preserved under paragraph 263 of the act of 1909, and the dyed ones under paragraph 438. See also *In re* American Express Co., Abstract 25903 (T. D. 31708); Bayersdorfer, Abstract 31381 (T. D. 33217); and International Forwarding Co., Abstract 31863 (T. D. 33325), and there are others of like import.

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The two board decisions last cited were before this court and are reported in 4 Court of Customs Appeals, at pages 446 and 455, respectively. We there held that dyed immortelles were dutiable under paragraph 438 of the act of 1909, on the ground that they were ornamental flowers within the scope of that paragraph. In the latter of these cases, natural undyed immortelles were also a part of the importation. They had been assessed by the collector as preserved cut flowers under paragraph 263, and no question as to the correctness of that assessment was made in this court. It was, however, claimed that the dyed immortelles were dutiable under the same paragraph. The court concluded that the term "ornamental flowers not specially provided for" covered the dyed immortelles.

This survey of rulings and decisions indicates that for the life of three tariff acts and while the statutory language was "artificial and ornamental," the law was at least administered upon the theory that "and" did not mean "or"; that under the two subsequent acts "or" did not mean "and," and we think in view of what has already been said, if indeed it be assumed that there is any uncertainty or ambiguity in paragraph 437, Congress intended to reenact, so far as it did reenact the same, the language of the earlier acts in the sense of, and in view of, the intrepretation which had been placed thereon. In other words, it intended to use the earlier language with the expectation that it would receive the same interpretation that had been given thereto. It must be presumed that Congress was aware of the classification of the crude, uncolored immortelles as crude vegetable substances, and of the dyed immortelles as unenumerated manufactured articles, and that the expression "artificial *and* ornamental" in the earlier paragraphs was not understood to mean "artificial *or* ornamental."

Treating the expression under consideration as a reenactment of the same language in the earlier acts, the rule of interpretation is that "the courts will follow the construction which they received when previously in force. The legislature will be presumed to know the effect which such statutes originally had and by reenactment to intend they should again have the same effect." Lewis's Sutherland Statutory Construction (sec. 403 and cases cited), Ahlbrecht *v.* United States (2 Ct. Cust. Appls., 471; T. D. 32226).

We think there is no escape from the conclusion that "and" in the expression under consideration was not used in the sense of "or"; that Congress deliberately intended to provide that artificial or ornamental feathers suitable for millinery use should pay the comparatively high duty rate of 60 per cent ad valorem, but the rate should not apply to fruits, grains, flowers, leaves, and stems, regardless of use, unless they are both artificial *and* ornamental, and

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it follows that the merchandise was erroneously classified under paragraph 347.

There remains for determination the question of proper classification. The importers' protest, as well as assignments of error, claim the merchandise to be dutiable directly or by similitude or according to the component material of chief value at 25 per cent ad valorem under paragraph 210 or, in the alternative, as unenumerated manufactured or unmanufactured articles under paragraph 385, and in this court the importers express the belief that the classification should be under paragraph 210 by similitude. The material part of that paragraph is as follows:

210. Orchids * * * and cut flowers, preserved or fresh, 25 per centum ad valorem. * * *

While there was no evidence upon that question before the board, yet we take cognizance of the fact that in International Forwarding Co. *v.* United States (4 Ct. Cust. Appls., 455; T. D. 33878) we held that dyeing was not properly a preserving process. The question of similitude was not there raised, and it being found that the dyed immortelles were directly dutiable as ornamental flowers it could not, if made, have availed. Now, natural dried immortelles would seem to be cut flowers within paragraph 210. In the absence of proof as to whether those before us are preserved within the meaning of that paragraph, the question is not before us. They are, however, cut, dried natural flowers, to which nothing has been done except the application thereto of an artificial coloring matter. While this has produced a striking change in the color of the flowers, nevertheless their quality, their texture, and their use, although the quality has been doubtless improved and the use largely widened, are still very similar to what they were before the flowers were colored, and they are still in form and shape and, in the material that makes their physical structure, flowers produced by nature, to the natural material of which a relatively small amount of coloring matter has been artificially added. The value of the dye so added as compared with the value of the flowers before being subjected to that treatment does not appear, but we think that in material, quality, texture, and use it can not well be said that they are not within the statute greatly similar to natural flowers. Indeed nature gives to many of its flowers colors resembling the artificial colors imparted to the immortelles in this case, and it is within common knowledge that before being dyed the natural dried immortelles are devoted to uses similar or identical with those to which the dyed immortelles are applied, although, by reason of their changed color, the dyed articles undoubtedly have, as already stated, a much wider use.

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We have no hesitation in concluding that these dyed immortelles are properly classifiable by similitude as preserved cut flowers under the paragraph.

As to the wreaths composed of such dried and dyed immortelles the evidence is that the straw frame is of little value as compared with that of the flowers composing the wreaths and the wreaths themselves are without doubt unenumerated manufactured articles. But paragraph 386 provides that "on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value; and the words 'component material of chief value,' wherever used in this section, shall be held to mean that component material which shall exceed in value any other single component material of the article."

Applying that language to these wreaths it at once appears that their component material of chief value is the dried and dyed immortelles; therefore the flowers themselves being dutiable by similitude under paragraph 210, it results that the wreaths are also classifiable thereunder by force of paragraph 386.

The judgment of the Board of General Appraisers is *reversed*.

(T. D. 36391.)

Hairpins—Wire articles.

HAGUE & CO. (INC.) *v.* UNITED STATES (No. 1664).

1. "COMPOSED WHOLLY OF"—LACQUERED ARTICLES.

An article made of metal and coated with lacquer for purposes of preservation and appearance is "composed wholly of" that metal within the meaning of paragraph 158, tariff act of 1913.

2. BASE-METAL SAFETY PINS AND HAIR PINS COATED WITH LACQUER, HOW DUTIABLE.

The fact that pins answering to the description of paragraph 158, tariff act of 1913, are coated with lacquer does not take them without the operation of the words "composed wholly of" certain named metals in that paragraph and make them dutiable as manufactures of wire under paragraph 114.

United States Court of Customs Appeals, May 1, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7817 (T. D. 35912).

[Affirmed.]

Allan R. Brown for appellant.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney, of counsel), for the United States.

[Oral argument April 12, 1916, by Mr. Brown and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The merchandise is metal safety pins and hairpins, lacquer coated. They were assessed for duty as "pins with solid heads without orna-

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mentation, including safety pins and hairpins" under the provisions of paragraph 158 of the act of October 3, 1913, which reads:

158. Pins with solid heads, without ornamentation, including hair, safety, hat, bonnet, and shawl pins; any of the foregoing composed wholly of brass, copper, iron, steel, or other base metal, not plated with gold or silver, and not commonly known as jewelry, 20 per centum ad valorem.

The importers, who are appellants here, claim the articles properly dutiable at a lesser rate under the provisions of paragraph 114 as articles made of wire. The case turns upon the point whether or not the lacquer coating takes them out of the provision "composed wholly" of iron as used in paragraph 158. Certain samples were submitted and referred by agreement for analysis by the chemist in charge at the appraiser's office at the port of New York. The chemist reported the character of the coating to be "*varnish* of lacquers." The report further recites:

Owing to the very small quantity of coating substances present on the sample, the amount separated is insufficient for proper identification.

It appears to contain some saponifiable fatty acid compound (probably oxidized oils), oxide of iron, insoluble nitrogenous material, and probably carbon black.

The Board of General Appraisers overruled the protest, upon the theory stated in their opinion as follows:

In effect, the contention of the importers is that by reason of the presence thereon of this coating these hairpins have virtually lost their identity as such, and for tariff purposes at least should be held to be merely manufactures of wire and classified accordingly under said paragraph 114.

We can not believe that the legislators ever entertained any such idea in enacting into law the provisions of said paragraph 158. It is a matter of common knowledge, of which the board is certainly entitled to take judicial notice, that practically all of the common and ordinary hair, hat, bonnet, and shawl pins, which are employed for everyday use, are invariably coated or painted with some substance intended to act as a preservative against atmospheric conditions. That Congress was also fully cognizant of this self-evident fact is known by the very language of paragraph 158, since it specifically excepts from the operation thereof any of the pins enumerated therein which are plated with gold or silver. An uncoated or unplated hairpin is such a rare item of merchandise that it is hardly conceivable that Congress would have deemed it necessary to enact a special provision of law to cover it.

The court is of the opinion that the decision of the board should be affirmed. A material in quantity so small as to be insufficient for identification can not be said to be one entering into the composition of an article to a degree sufficient to characterize in any manner that article. Moreover, it appears with this merchandise that it was no more than a varnish or a paint not in fact composing the article or entering therein as a component material, but added for the purposes of preservation and appearance. It is in no respect different, in the opinion of the court, from the painting of any other article of merchandise. Silk goods are weighted before being calendered. That fact, however, does not render them any the less

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articles composed wholly of silk. The words "composed wholly of" were considered in Schiff & Co. *v.* United States (140 Fed., 63), affirmed in United States *v.* Schiff (145 Fed., 1023), with reference to braids of straw the ends of which were temporarily tied with cotton threads *to prevent raveling.* It was held by the Circuit Court of Appeals for the Second Circuit that such did not exclude the merchandise from a provision for braids composed wholly of straw.

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 36392.)

Tiles.

UNITED STATES *v.* VANDEGRIFT & CO. (No. 1659).

1. CONSTRUCTION.

The fact that the Board of United States General Appraisers had decided the expression "semivitrified," as applied to tiles, tariff act of 1897, to be "indefinite, meaningless, and incapable of a uniform understanding" does not justify a conclusion that, by repeating the expression in the tariff acts of 1909 and 1913, Congress deliberately continued to use the term as one which was "indefinite, meaningless, and incapable of a uniform understanding." This action by Congress should be taken to mean that, notwithstanding the board's decision, the term in question aptly applied, at the time of the later enactments at least, to certain kinds of tiles which were known to the trade of this country. The court should not impute to Congress the deliberate use of terms known and designed by it to be "indefinite, meaningless, and incapable of a uniform understanding."

2. SEMIVITRIFIED TILES, HOW DUTIABLE.

A preponderance of the evidence establishes that the term "semivitrified," as applied to tiles, had a well-known meaning in the trade at the time of the enactment of the tariff act of 1913 (which meaning, after all, was simply the ordinary or dictionary meaning of the word itself), and that the merchandise at bar aptly responds to it. Accordingly, it is dutiable *eo nomine* under paragraph 72.

United States Court of Customs Appeals, May 1, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7813 (T. D. 35895).

[Reversed.]

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Submitted on record by appellees.

[Oral argument April 14, 1916, by Mr. Lawrence.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in the present case is described on the invoice as "red ferrolite flooring tiles."

The appraiser returned the tiles as "semivitrified," and the collector accordingly assessed duty thereon at the rate of 5 cents per square foot under paragraph 72 of the tariff act of 1913.

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The importers protested against the assessment, denying that the tiles were "semivitrified," and claiming them to be dutiable under the same paragraph at the rate of 1½ cents per square foot as "tiles, plain unglazed, one color, exceeding two square inches in size."

The protest was sustained by the Board of General Appraisers, and the Government appeals.

The following is a copy of paragraph 72, tariff act of 1913:

72. Tiles, plain unglazed, one color, exceeding two square inches in size, 1½ cents per square foot; glazed, ornamented, hand-painted, enameled, vitrified, semivitrified, decorated, encaustic, ceramic mosaic, flint, spar, embossed, gold decorated, grooved, and corrugated, and all other earthenware tiles and tiling, except pill tiles and so-called quarries or quarry tiles, but including tiles wholly or in part of cement, 5 cents per square foot; so-called quarries or quarry tiles, 20 per centum ad valorem; mantels, friezes, and articles of every description or parts thereof, composed wholly or in chief value of earthenware tiles or tiling, except pill tiles, 30 per centum ad valorem.

It will be observed from the foregoing statement that the sole question in the present case is one of fact, namely, whether the imported tiles are semivitrified, and if not, whether they are plain unglazed tiles. The board has found upon the testimony in favor of the latter classification, and the court is now called upon to decide whether this finding is sustained by sufficient evidence.

In the tariff act of 1894 no provision was made for "semivitrified" tiles. That act apparently divided all tiles into two classes with respect to vitrification, namely, tiles which were "plain, * * * not vitrified" and tiles which were "vitrified." The following is a copy of paragraph 78 of the act of 1894:

78. Tiles, plain, not glazed, ornamented, painted, enameled, vitrified, or decorated. twenty-five per centum ad valorem; ornamented, glazed, painted, enameled, vitrified, or decorated, and encaustic, forty per centum ad valorem.

In the tariff revision of 1897 the classification of "semivitrified" tiles appeared for the first time in tariff enumerations. Paragraph 88 of that act reads as follows:

88. Tiles, plain unglazed, one color, exceeding two square inches in size, four cents per square foot; glazed, encaustic, ceramic mosaic, vitrified, semivitrified, flint, spar, embossed, enameled, ornamental, hand painted, gold decorated, and all other earthenware tiles, valued at not exceeding forty cents per square foot, eight cents per square foot; exceeding forty cents per square foot, ten cents per square foot and twenty-five per centum ad valorem.

In the case of the American Shipping Co., G. A. 6906 (T. D. 29744), decided May 11, 1909, the Board of General Appraisers heard testimony concerning the application of the new tariff term "semivitrified," and held upon the evidence then submitted that at the time of the enactment of the tariff act of 1897 there was no article which was definitely, uniformly, and generally known to the trade in the United States under the name of a "semivitrified" tile, and that the term "semivitrified" as applied to tiles was "indefinite,

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meaningless, and incapable of a uniform understanding." The testimony which was taken in the foregoing case is incorporated in the present record.

Notwithstanding this decision of the board, Congress again enumerated "semivitrified" tiles for duty in the succeeding tariff revisions of 1909 and 1913. As has been stated, the present case arises under the tariff act of 1913.

In the decision now upon appeal the board cited its former decision, which held that the trade in this country knew of no article bearing the name of a "semivitrified tile," and made the following comment thereon:

> This decision of the board was not appealed by the Government and has stood and still stands undisturbed as the only judicial construction of the language of the tile paragraph as embodied in the act of 1897 applicable to tiles of this character. Within a few months after the publication of this decision, to wit, on August 5, 1909, Congress revised the tariff act of 1897, and in all material respects, so far as this class of merchandise is concerned, reenacted the provisions of 1897.
>
> Again, in the revision of October 3, 1913, Congress reenacted the same language, in so far as this class of tiles is affected. It must be presumed that Congress had full knowledge of G. A. 6906, *supra*, and it is therefore a reasonable assumption that since the revisions made no change in the language designed to provide for rates of duty on tiles, except as to rates, the omission so to do was deliberate and in effect an acceptance by Congress of the judicial construction given the language of the prior act by the board.

Consistently with the foregoing views the board apparently rests its present decision in chief part upon the finding that the term "semivitrified tiles" in the act are without practical application, since there are no articles known to commerce in this country which respond thereto.. The board also concludes that Congress had accepted the construction given the language of the prior act by the board, as above set out, and had used the same term again in the acts of 1909 and 1913 with the same application or lack of application theretofore imputed to it by the board.

We can not agree with the foregoing views. We think that the use by Congress of the term "semivitrified tile" in the tariff acts of 1909 and 1913, after the board's decision against the term under the tariff act of 1897, does not imply that Congress had deliberately continued to use the term as one which was indefinite, meaningless, and incapable of a uniform understanding, but rather that Congress thereby intended to indicate that notwithstanding the board's decision the term in question aptly applied, at the time of the later enactments at least, to certain kinds of tiles which were known to the trade of this country. The court should not impute to Congress the deliberate use of terms known and designed by it to be indefinite,meaningless, and incapable of a uniform understanding. We may furthermore note the fact that vitrified tiles were concededly well known in trade at the time of the

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several enactments in question, and that the word "semivitrified" appears in standard dictionaries bearing a definition consistent with its obvious etymology. In the absence of trade testimony to the contrary this dictionary definition of the word should be adopted as likewise the trade definition thereof. The following authorities are quoted:

Century Dictionary:

Semivitrified.—Half vitrified, or imperfectly vitrified; partially converted into glass.

Webster's Dictionary:

Semivitrified.—Half or imperfectly vitrified; partially converted into glass.

Standard Dictionary:

Semivitrified.—Partly vitrified or changed into glass.

Upon a review of the present record we find that the board's decision upon the fact in issue is not sustained by the testimony. The convincing weight of the evidence in the case favors the view that for many years the term "semivitrified tile" was not known in the commerce of this country. Apparently all tiles were then divided in this particular into two classes only, namely, plain and vitrified. The former class was made up of soft, porous tiles which entirely lacked the quality of vitrification; the latter class consisted of tiles which were as fully vitrified as any then manufactured. During this period the tariff enumerations, following the trade conditions and nomenclature, provided for plain and vitrified tiles only, without mention of a semivitrified class. But about the time of the enactment of the tariff act of 1897 the trade took general cognizance of the existence of a class of tiles which occupied an intermediate position between these two classes. The tiles belonging to this class were not fully vitrified; nevertheless by reason of added materials at firing or of the degree of heat to which they were then subjected they were partially vitrified, and were thereby distinguishable on the one hand from the class of plain or wholly unvitrified tiles, and from the fully vitrified tiles upon the other hand. The dividing line between these classes might at times be indistinct; nevertheless the classes themselves when taken at large were clearly distinguishable from one another, and this fact was well known in the trade.

The testimony in the present record is voluminous, and only brief portions of it can here be copied. The following extracts, however, sufficiently state those facts which are sustained by the record according to our interpretation of it.

Hermann Petri:

Q. Are you familiar with the term semivitrified as applied to tiles?—A. I am.

Mr. RODE. I object because it hasn't been shown that there is a term semivitrified.

General Appraiser McCLELLAND. He says he is familiar with the term; objection overruled.

Exception.

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Last question and answer repeated by the stenographer.

Q. How long have you been familiar with that term?—A. About 20 years.

Q. Is it a term which you find used throughout the wholesale trade in the United States with a definite, uniform, and general meaning—A. It is.

Q. That is, is your understanding and that of the trade with which you come in contact uniform and definite in reference to that term?—A. Yes, sir.

Q. Now, will you please tell us what the trade understanding of that term is?—A. A semivitreous tile is a tile that isn't burned as hard as a vitreous tile, and a vitreous tile is a nonabsorbent, but a semivitreous tile is absorbent to a certain extent.

Q. Can you, as one familiar with tiles, distinguish between vitrified and semivitrified tiles upon an inspection of any given samples?—A. I certainly can.

Q. How is the characteristic of semivitrification manifested in a given sample?

Mr. RODE. I object here at this point. The witness has spoken about a semivitreous tile and counsel has just used the term vitrified or semivitrified or semivitrification; I don't know whether those terms are synonomous and the same or not.

Q. Mr. Petri, do you use the term semivitreous and semivitrified with the same meaning?—A. Yes, sir.

Question repeated by the stenographer as follows: "How is the characteristic of semivitrification manifested in a given sample?"—A. Why, by the appearance of the tile, the texture of it, the ring to it, and also the absorption qualities.

Q. Are you capable of making those tests?—A. I am.

I show you the official sample in this case, and I will ask the board that they be marked in evidence as Exhibits 1 and 2 in order that they may be more easily identified; they seem to be duplicates, mark them Exhibit 1, I guess. [Two samples marked collective Exhibit 1.]

Q. Will you please examine those samples; do you deal in goods of similar character and description?—A. I do.

Q. How many years have you been handling them?—A. Twenty years or more.

Q. Will you please apply such tests as you are able to for the purpose of determining whether these are within the trade classification of semivitrified tiles?—A. They are both alike; do you want me to try both of them?

Q. (By Mr. RODE.) It is conceded they are alike.—A. According to my tests they are semivitreous tile.

Q. Having in mind the trade understanding or meaning of the term semivitreous tile as you have given it, state whether or not, at and prior to October 3, 1913, tiles like these were included in the trade class, semivitrified tiles.—A. They were.

Q. Has that always been true during your experience with semivitrified tiles?—A. Yes, sir.

* * * * * * *

Q. Now, will you please tell us what principal charcateristics distinguished the three classes of tiles you have testified about—that is, the plain unglazed, the semivitrified, and the vitrified?—A. The plain unglazed tile, as I said before, is a very soft tile, and is very absorbent, and it was used years ago more than it is now for the simple reason that it was about the only product we could get at that time; a little later a semivitrified tile was made which was less absorbent than the plain unglazed tile, and we kind of abandoned the idea of using the plain unglazed tile; then the manufacturers made the vitreous tile, which is a tile that doesn't stain; it is absolutely nonabsorbent and does not stain; ink may be dropped on it and marked on it without staining the tile.

Q. Do you have anything to do with the laying of tiles?—A. I do.

Q. Do you know whether the processes are the same or different with reference to the laying of the various tiles such as you have described?—A. They are different.

Q. Wherein do they differ?—A. The vitrified tile needs no soaking in water before it is laid; the semivitrified tile needs some soaking in water, but very little, before it

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is laid in the pad of cement, and the unglazed plain tile needs considerable soaking in water before it is laid in cement so as not to absorb all the water out of the cement it is in.

Frederick R. Lawrence:

Q. Have you bought tiles from quite a number of manufacturers during your experience?—A. No, sir; I have bought all my tiles in the United States.

Q. Does the output of the several factories vary or are they all about uniform?—A. They are quite uniform.

Q. Would you say that was true of the semivitrified and the unglazed tiles?—A. Yes.

Q. Both?—A. Yes.

Q. That the semivitrified tile of each of the factories would absorb to about the same degree?—A. Just about; they are all about the same standard.

Q. And that would also be true of the plain unglazed tile?—A. Yes.

Q. And you say that the output of one factory will not absorb any more than the output of another?—A. I would say not.

Charles H. Brown:

Q. Do you come in contact with the wholesale buyers or sellers of tiles?—A. I do with sellers.

Q. And generally speaking, all through the United States?—A. Yes.

Q. And have you come in contact with that trade for many years?—A. I have bought tiles for about twenty to twenty-two years.

Q. And you are familiar with the terminology of the trade as used by these wholesalers?—A. Yes, sir.

Q. Is the term vitrified tile a well understood term in the trade?—A. Yes.

Q. Is the term semivitrified tile well understood in the trade?—A. Yes.

Q. Is the term plain unglazed tile well understood in the trade?—A. Yes.

Q. And has the meaning of those various terms been uniform, definite, and general throughout your experience in the United States?—A. They always have; yes.

Q. Now, Mr. Brown, what are the identifying characteristics of vitrified tiles?—A. Their density, their nonabsorbent qualities, and because of their hardness.

Q. Will you please examine Exhibit 1, collective Exhibit 1; can you by any tests known to you determine to what class of tiles that belongs?—A. That is a semivitreous tile, pretty near to the vitreous tile, I should think—no, it is not a vitreous tile.

Q. Do you observe the fracture of the tile, and its ring?—A. Yes.

Q. It is absorbent?—A. That tile will absorb moisture, yes.

Q. Applying those tests of absorption, ring, and observing the fracture, can you determine the class to which that belongs?—A. That is a "semivit."

Q. Has that been true during all your trade experience?—A. Yes, sir; always.

Emil Kohler:

Q. Are you familiar with the terms used by the trade?—A. I am.

Q. Are you familiar with the term vitrified tile?—A. I am.

Q. Are you familiar with the term semivitrified tile?—A. I am.

Q. Plain unglazed tile?—A. Yes, sir.

Q. Flint tiles?—A. Yes, sir.

Q. Are those all terms which have been used in the wholesale trade for many years?—A. Yes, sir.

Q. How many years?—A. As far back as I have been connected with the business, 17 years back.

Q. Have those various terms well-known, well-understood, and general trade understanding?—A. Yes, sir.

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Q. What is the trade understanding of the term vitrified tile?—A. A vitrified tile is a tile which is impervious to moisture, and is, in fact, a tile that is absolutely nonabsorbent.

Q. What is the trade understanding of a semivitrified tile?—A. A semivitrified tile is a tile which is not altogether nonabsorbent; it absorbs to a small degree.

Q. With regard to the durability and density, which is the more durable?—A. The vitrified tile.

Q. And which is the denser?—A. The vitrified tile.

Q. With regard to the use, are the vitrified and semivitrified tile used for the same purposes?—A. They are.

Q. Is one more efficient than the other?—A. It is as regards durability?

Q. Which one?—A. The vitrified tile.

Q. Coming to the semivitrified tile as compared with the plain unglazed tile, is there any difference to your knowledge in the fracture exhibited?—A. There is.

Q. In what respect?—A. The latter is of a softer structure and a coarser body, and it is a great deal more absorbent and not as durable as the other.

Q. You have said the one and the other?—A. I am talking now about the plain unglazed tile which you have just asked me about.

Q. And the plain unglazed tile absorbs as much or more than a semivitrified tile?—A. Decidedly more.

Q. Is its durability greater or less than a semivitrified tile?—A. Decidedly less.

Q. Is it used in the same manner as the semivitrified tile?—A. No.

Q. Wherein do they differ?—A. The semivitrified tile has taken the place, to a great extent, of the plain unglazed tile.

Q. But do I understand that the plain unglazed tile has been superseded entirely?—A. Not entirely.

Q. It is still used in substantial quantities?—A. It is still used. I don't know about the quantities.

Q. (By General Appraiser McClelland.) Are you making any in your factory at all?—A. No, sir.

Q. What are the uses of the plain unglazed tile, to your knowledge?—A. The uses of unglazed tiles are to some extent for floors where there is not much traffic and also for ornaments on walls and mantels and wainscoting.

Q. But as a flooring tile it is not as efficient as the semivitrified tile?—A. It is not.

* * * * * * *

Q. And now will you define a plain unglazed tile?—A. A plain unglazed tile is a porous tile made of a coarse body loosely put together and therefore more absorbent than any of the other two classes.

Hamilton Hazelhurst:

Q. Does the trade—are there any tests known to the trade by which you can readily distinguish between the three varieties of tiles which you have mentioned; that is, the semivitreous and the plain unglazed tile?—A. Only the tests that have been mentioned, the absorption test, and the fracture, and the ringing to tell how hard the tile is.

Q. Please examine Exhibit 1, that is the square sample there; please tell us whether the tile you have introduced here as a semivitreous tile is similar in character and structure to this Exhibit 1?—A. It is.

Q. How many years have you been dealing in tiles of that character?—A. Since about 1902 we have made the small tiles of that description, but these larger ones only about two years.

Q. They differ only in size, do they?—A. That is all.

Q. Referring to Exhibit 1, was that included or excluded from the trade class of semivitrified on or just prior to October 3, 1913?—A. It has been known as a semivitreous for a number of years.

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Q. And how many years has the trade employed the term?—A. I think since the issuance of the American Encaustic Co.'s price list, which was put in evidence.

Q. Based on your experience in the trade, how long have such tiles been known as semivitreous tiles?—A. About 12 years, I should say.

The statements contained in the foregoing testimony are, indeed, contradicted by certain other witnesses; nevertheless, the facts therein set out are fully sustained by the testimony when considered together. We are therefore convinced from the record that the term "semi-vitrified," as applied to tiles posesssed a well-known meaning in the trade at the time of the enactment of the paragraph now in question, which meaning, after all, was simply the ordinary or dictionary definition of the word itself, and that the present importations aptly respond to that description and are therefore dutiable as assessed.

The decision of the board is *reversed.*

(T. D. 36393.)

Port of entry.

Winston-Salem, N. C., made a port of entry in customs collection district No. 15.

TREASURY DEPARTMENT, *May 8, 1916.*

To collectors of customs and others concerned:

The appended Executive order, dated April 24, 1916, making Winston-Salem, N. C., a port of entry in customs collection district No. 15, is published for the information of all concerned.

(90740–15.) WM. P. MALBURN, *Assistant Secretary.*

EXECUTIVE ORDER.

Under the provisions of the act of Congress approved August 1, 1914, making appropriations for the sundry civil expenses of the Government for the fiscal year ended June 30, 1915, Winston-Salem, N. C., is hereby created a port of entry in customs district No. 15, of which Wilmington is the headquarters port.

This order will become effective on May 1, 1916.

WOODROW WILSON.

WHITE HOUSE, *24th April, 1916.*

(T. D. 36394.)

Plant quarantine act—Transportation of imported cotton.

Collectors instructed relative to the transportation of imported cotton.

TREASURY DEPARTMENT, *May 9, 1916.*

To collectors of customs:

In accordance with a request of the Secretary of Agriculture, you are instructed to refuse the entry of foreign cotton in bond for

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immediate transportation, and to hold such cotton at the port of first arrival until the importer has received from the Federal Horticultural Board of the Department of Agriculture a permit in which the route of transportation shall be specified.

(92655-19.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36395.)

Sampling molasses.

A 10 per cent sample to be taken of molasses imported in barrels which is claimed to be 38° or less. If samples are found to be between 39° and 41°, a 100 per cent resample to be taken.

TREASURY DEPARTMENT, *May 11, 1916.*

To collectors and other officers of the customs:

Article 957 of the Customs Regulations of 1908 relative to the sampling of imported molasses, continued in force by article 532 of the Customs Regulations of 1915, is hereby amended by adding to the end thereof the following:

When molasses, which is represented by the importer to test by the polariscope 38° or less is imported in barrels, a 10 per cent sample shall be taken. In the event that the samples thus obtained are found by the polariscopic test to be between 39° and 41°, a 100 per cent resample shall be taken.

(67934.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36396.)

Exportation— What constitutes.

Merchandise intentionally shipped from this country but denied entrance in a foreign country not exported.

TREASURY DEPARTMENT, *May 11, 1916.*

SIR: The department has to refer to your letter of January 19, 1916, further relative to the application of a firm in your city for the free entry of two cases of German hosiery which had been shipped to Canada from New York and subsequently returned to the United States, the Canadian commissioner of customs having refused entry of the merchandise into Canada because it was of German origin.

It is represented that the merchandise was imported from Germany in the latter part of 1913 and the early part of 1914, and that duty was paid thereon. The applicant's request for free entry is based on the theory that the merchandise having been denied entry into Canada was not exported from this country.

Ordinarily goods are exported when they are carried out of the country and it accordingly becomes necessary in reaching a conclu-

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sion in this case to determine whether the removal of the hosiery outside the boundaries of the United States constituted an exportation from this country. The Attorney General, in an opinion dated July 2, 1883 (17 Op., 579–583), stated that the legal notion of exportation is a severance of goods from the mass of things belonging to this country with an intention of uniting them with the mass of things belonging to some foreign country.

Under this definition, which was quoted with approval by the Supreme Court of the United States in the case of Swan & Finch Co. *v.* United States (190 U. S., 145), it appears that two conditions must obtain—first, an intent to export, and, secondly, the execution of the purpose by having the goods mingle with and become a part of the mass of things belonging to the foreign country to which transported.

Although the applicant intended to export the hosiery to Canada and it actually reached Canadian territory, the Canadian authorities denied entry thereof and would not permit the hosiery to become a part of the commerce of that country, and therefore one of the conditions necessary to the exportation of merchandise is lacking in this case.

In view of the foregoing, the department is of the opinion that the removal of the hosiery from the territory of the United States to that of Canada was not an exportation, and therefore its return to this country was not an importation. You are accordingly directed to release the merchandise without the payment of duty thereon.

Respectfully, ANDREW J. PETERS,
(103406.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36397.)

Rice-bead curtains, glass-bead curtains, etc.

Appeal directed from decision of the Board of United States General Appraisers of April 21, 1916, G. A. 7889 (T. D. 36343), involving the classification of certain rice-bead curtains, glass-bead curtains, etc.

TREASURY DEPARTMENT, *May 9, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 3d instant, inviting attention to the decision of the Board of United States General Appraisers of April 21, 1916, G. A. 7889 (T. D. 36343), involving the classification of certain rice-bead curtains and glass-bead curtains, etc.

The articles in question had been assessed with duty at the rate of 50 per cent ad valorem under paragraph 333 of the tariff act of 1913, and the rice-bead curtains were held by the board to be dutiable

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by similitude (par. 386) to curtains in chief value of bamboo, wood, straw, or compositions of wood at the rate of 25 per cent ad valorem under paragraph 175 of the said act, and the others as articles in chief value of glass, colored, at the rate of 45 per cent ad valorem under paragraph 84.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(92993.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36398.)

Imitation Panama hats.

Imitation Panama hats dutiable at the rate of 30 per cent ad valorem under paragraph 323, tariff act of 1913, as articles manufactured from tissue paper of which tissue paper is the component material of chief value.

TREASURY DEPARTMENT, *May 11, 1916.*

SIR: The department duly received your letter of the 10th ultimo, inclosing a communication from the appraiser at your port relative to a proposed change in practice in the classification of imitation Panama hats.

It appears that it has been the practice to assess duty on such merchandise as manufactures of paper not specially provided for at the rate of 25 per cent ad valorem under paragraph 332 of the tariff act of 1913, and it is proposed to change the classification to that of manufactures of tissue paper dutiable at the rate of 30 per cent ad valorem under paragraph 323 of the said act.

It appears that a careful examination discloses the fact that the articles are made of strips of tissue paper rolled and coated so as to imitate grass or straw. The department therefore concurs in the proposed change in classification, and you will assess duty on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof at the rate of 30 per cent ad valorem under paragraph 323 of the tariff act of 1913 as articles manufactured from tissue paper or of which tissue paper is the component material of chief value.

Respectfully, ANDREW J. PETERS,
(104952.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36399.)

Revocation of the authority of the Illinois Surety Co., of Chicago, Ill.

[Circular No. 58.]

TREASURY DEPARTMENT, *May 10, 1916.*

To bond-approving officers and others concerned:

This is to inform you that the Illinois Surety Co., of Chicago, Ill., has ceased to transact a fidelity and surety insurance and reinsurance business, a receiver having been appointed on April 19, 1916, in consequence of a petition filed by the stockholders to take charge of the affairs of the company, to liquidate its business, and distribute its assets. The authority heretofore granted to this company under the provisions of the act of Congress of August 13, 1894 (28 Stat., pp. 279–80), as amended by the act of March 23, 1910 (36 Stat., p. 241), is, therefore, hereby revoked.

All officers of the United States having knowledge of any existing claim, or of the occurrence of any event, or of the existence of any circumstances which may hereafter result in a claim against the Illinois Surety Co., are hereby directed to communicate the facts in detail to the section of surety bonds of the Treasury Department within 15 days after the receipt of this notice. This information should include the name of the principal, the date and amount of the bond, the nature of the claim, the circumstances out of which it arose, and the status of the claim at the time of the report.

All bond-approving officers are notified that it will be necessary to require new bonds in all cases where the Illinois Surety Co. has qualified as sole surety or severally as cosurety, or where it has assumed any liability on Government bonds. It will be necessary for the protection of the Government that all such bonds shall be executed effective as of April 19, 1916. Care should be exercised by bond-approving officers that this be done in every such case.

The National Surety Co., of New York, N. Y., has informed the department that it has entered into an agreement with the Illinois Surety Co. enabling it to take over bonds of the latter company, or execute new ones in lieu thereof, without charge to the principals for the unexpired portion of such bonds, provided, however, that any principal may select any other company that is acceptable to the department.

Bond-approving officers are directed to acknowledge the receipt of this circular, and to notify the section of surety bonds of the Treasury Department promptly of their compliance with these instructions.

W. G. MCADOO, *Secretary of the Treasury.*

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(T. D. 36400.)

Antique furniture.

Appeal from decision of the Board of United States General Appraisers of March 14, 1916, Abstract 39392, involving the classification of certain furniture.

TREASURY DEPARTMENT, *May 13, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 9th instant, relative to the decision of the Board of United States General Appraisers of March 14, 1916, Abstract 39392, wherein certain items of furniture claimed to be over 100 years old and free of duty under paragraph 656 of the tariff act of 1913, were held by the board to be free of duty under the said paragraph 656 of the tariff act as antiquities over 100 years old.

Your action in filing, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909, is hereby approved.

Respectfully, WM. P. MALBURN,
(67782-5.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36401.)

Sliced deer horn.

So-called sliced deer horn, used by the Chinese as a medicine, dutiable as a medicinal preparation at the rate of 15 per cent ad valorem under paragraph 5, tariff act of 1913, unless put up in individual packages of 2½ pounds or less, gross weight, when it is dutiable at the rate of 20 per cent ad valorem under paragraph 17 of the said act.

TREASURY DEPARTMENT, *May 12, 1916.*

SIR: The department is in receipt of your letter of the 2d instant, inclosing a communication from the appraiser at your port relative to a proposed change in the classification of so-called sliced deer horn, used by the Chinese as a medicine

It appears that it has been the practice to classify the merchandise as horn, unmanufactured, free of duty under paragraph 511 of the tariff act of October 3, 1913, following T. D. 24936.

It now appears, however, that the article is ready for use as a medicine in its condition as imported, and the department approves the proposed change in classification of the article to that of a medicinal preparation.

You will, therefore, in cases of merchandise of the character in question imported 30 days after the date hereof assess duty thereon

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as a medicinal preparation at the rate of 15 per cent ad valorem under paragraph 5 of the tariff act of 1913, unless put up in individual packages of 2½ pounds or less, gross weight, when you will assess duty at the rate of 20 per cent ad valorem under paragraph 17 of the said act.

Respectfully, WM. P. MALBURN,
(104882.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36402.)

Export bounty on sugar.

Collectors instructed that no countervailing duty, under paragraph E of section 4 of the tariff act of October 3, 1913, should be assessed on sugar from Jamaica.

TREASURY DEPARTMENT, *May 12, 1916.*

SIR: Referring to your letter of the 5th instant, I have to state that the department has been informed through the Department of State that no bounty of any kind is paid on sugar exported from Jamaica. Therefore no countervailing duty under paragraph E of section 4 of the tariff act of October 3, 1913, should be assessed on sugar imported from that colony.

Respectfully, WM. P. MALBURN,
(67760.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36403—G. A. 7906.)

Teazled cloth not pile fabrics.

Upon the common meaning of the terms used, no different commercial meaning having been established, certain woven fabrics in chief value of Angora goat hair, having a teazled surface imitating plush are not properly classifiable under paragraph 309, tariff act of 1913, as "plushes, velvets, and all other pile fabrics" at 45 per cent ad valorem, but are dutiable as "cloth and all manufactures of every description made by any process, wholly or in chief value of the hair of the Angora goat" at 40 per cent ad valorem under paragraph 308.

United States General Appraisers, New York, May 12, 1916.

In the matter of protests 770381, etc., of C. A. Haynes & Co. et al. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Brooks & Brooks (*Frederick W. Brooks, jr.*, of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence, Leland N. Wood*, and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

BROWN, *General Appraiser:* The merchandise is stated in the appraiser's reports to be woven fabrics in chief value of Angora goat

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hair, and to have a teazled surface imitating plush. The examiner being of the opinion that they were commercially known as plushes, returned the goods as plushes composed in chief value of the hair of the Angora goat at 45 per cent under paragraph 309, act of 1913, reading:

309. Plushes, velvets, and all other pile fabrics, cut or uncut, woven or knit, whether or not the pile covers the entire surface, made wholly or partly of the hair of the Angora goat, alpaca, or other like animals, and articles made wholly or in chief value of such plushes, velvets, or pile fabrics, 45 per centum ad valorem.

Several claims are made in the protests, but the one relied on is that under paragraph 308, reading:

308. Cloth and all manufactures of every description made by any process, wholly or in chief value of the hair of the Angora goat, alpaca, and other like animals, not specially provided for in this section, 40 per centum ad valorem.

The testimony shows that the goods in question (Exhibits 1, 2, and collective Exhibit 3) are manufactured by a so-called teazling process, which roughens the surface of the cloth after it is woven and gives a soft effect, which the Government claims makes it a plush, while the importers claim, on the other hand, that it does not have that effect.

The commercial testimony is very conflicting, most of the Government witnesses testifying that it is bought and sold as a plush, and so denominated in the trade, while a number of equally credible witnesses presented by the importers testified that it is never denominated as a plush in the trade.

Assuming, but not deciding, that the terms "plushes" and "pile fabrics," as used in this paragraph, are not terms of description merely and are subject to commercial designation, we hold in the first place, in view of this conflicting testimony, that no definite, uniform, and general designation of these fabrics is made out so as to include them within the term "plushes."

On this record, therefore, resort must be had to the common meaning to determine the issue.

"Pile fabrics" is a general term for certain material, which includes as one of its subdivisions plushes. See opinion of Judge Montgomery in Knauth, Nachod & Kuhne *v.* United States (6 Ct. Cust. Appls., 128; T. D. 35389) and definitions quoted therein.

It is interesting to note that all the commercial witnesses on both sides substantially agree that this is so, which we presume amounted to a concession on the part of all of them that the meaning in the trade did not differ from the common meaning in this respect.

In the case of M. J. Corbett & Co., G. A. 7572 (T. D. 34545), Judge Cooper, speaking for Board 2, said:

From an examination of the authorities on textile weaving it appears that in the weaving of every pile fabric one series of threads, either warp or filling, is employed for producing the ground of the fabric, while a second series forms the pile; so that two distinct systems of warp or of filling threads are always necessary in the manufacture of such goods.

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The reason for this is that, in order to produce the effect known as the pile fabric, including velvets, plushes, and astrakhans, this extra and distinct set of warp or filling threads is required.

This record shows clearly that the goods in question were not produced by any such method, but on the contrary, as before stated, the teazling or gigging process is applied to the surface of what was already a completely woven cloth.

We therefore hold that the goods in question are not plushes within the common meaning of that term in paragraph 309.

The Government attorney claims that the burden was upon the importers to show that the goods in question were not commercially plushes in view of the fact that they first went into the question of commercial definition, and there being a conflict, they have not sustained that burden. With this contention we can not agree, because in the absence of commercial meaning otherwise, the goods in question are clearly not plushes within the common meaning of that term, and in order to so classify them as plushes, the Government would have to show a uniform, definite, and general meaning in the trade designating them as such, which, in our opinion, they have failed to do.

And this legal situation can not be changed and the burden of proof shifted because the importers happened to go into the question of commercial meaning with their witnesses when they had them on the stand to show the characteristics of the cloth and its method of manufacture, instead of reserving such questions for rebuttal.

We therefore hold that the merchandise is properly dutiable under paragraph 308, as claimed. The protests are sustained and the decision of the collector reversed.

(T. D. 36404—G. A. 7907.)

Dental forceps.

Dental forceps, like surgical forceps, are properly classifiable for duty at the rate of 20 per cent ad valorem under paragraph 167, tariff act of 1913, as manufactures of metal not specially provided for, rather than dutiable at the rate of 30 per cent ad valorem under the provision in paragraph 166 of said act for "nippers and pliers of all kinds."—See decision in the case of Koch *v.* United States (6 Ct. Cust. Appls., 534; T. D. 36148).

United States General Appraisers, New York, May 12, 1916.

In the matter of protests 764435, etc., of C. A. Sykes against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Curie, Smith & Maxwell (*Herbert M. Wallace* of counsel) for the importer.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

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Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The articles in question consist of dental forceps upon which duty was levied at the rate of 30 per cent ad valorem under the provision in paragraph 166 of the act of 1913 for "nippers and pliers of all kinds wholly or partly manufactured," and which are claimed to be properly dutiable at but 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for.

It appears from the uncontradicted testimony offered on behalf of the importers that these forceps are made by hand and are composed of steel which has been specially tempered to insure against breaking when pressure is exerted upon the handles; that they have been designed by dental and medical surgeons and are provided with beaks which are so constructed as to fit the peculiar anatomy of the teeth; that particular kinds of forceps are necessary for the removal of certain teeth—large forceps, with beaks which fit the roots of the tooth, being required for extracting large molars, smaller forceps for smaller teeth, and a still smaller size being necessary for extracting children's first teeth.

It further appears that no one but a duly authorized dental or medical surgeon may lawfully make use of these forceps in extracting teeth, which is the sole purpose for which they were specially constructed and designed; and that the name "forceps" is the only term by which the articles are known and recognized throughout the trade in this country.

In the case of Koch *v.* United States (6 Ct. Cust. Appls., 534; T. D. 36148), the question presented was, whether certain surgical forceps and other surgical instruments having two lever handles working on a pivot and operating two cutting, gripping, or pinching jaws or blades, were properly classifiable under the provision in paragraph 166 of the present tariff act for "nippers and pliers of all kinds." In excluding such articles from the operation of said provision the United States Court of Customs Appeals, in the course of its opinion, said:

> Assuredly the man of the farm, the man of the bench and shop, the man of great telegraph, telephone, or railroad operations, or the man in touch with the common automobile operations of the day, immediately upon the suggestion of the words, forms a definite, distinct, and discriminating idea of what is meant by "pliers," "pinchers," or "nippers," which in no sense includes *dental*, obstetrical, or other "forceps," the suggestion of which immediately carries the mind to the dental laboratory or surgical hospital.

While it is true that the particular merchandise involved in the Koch case, *supra*, did not happen to include dental forceps of the kind here under consideration, there is not the slightest question but

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that the terms of the decision fully cover them and indicate precisely their proper tariff classification. In the view of the court, dental forceps and surgical forceps are in the category of articles which were not intended to be covered by the provisions of paragraph 166.

We accordingly follow the ruling of the court and hold the dental forceps here in question to be properly classifiable for duty at the rate of 20 per cent ad valorem under paragraph 167 as manufactures of metal not specially provided for. That claim in each protest is therefore sustained and the decisions of the collector are modified accordingly.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

Before Board 1, May 5, 1916.

No. 39687.—Protests 770299, etc., of Butler Bros. (New York).

Glass Drinking Sets.—Liquor and water sets comprising decanter and drinking glasses, and drinking sets in wood baskets, classified as blown glassware at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable according to the component material of chief value, either as metal at 20 per cent under paragraph 167, or as wood at 15 per cent under paragraph 176.

Opinion by Sullivan, G. A. The appraiser reports that the component of chief value is blown glass or blown glass, decorated. On the authority of Abstract 34659 (T. D. 34165) the merchandise was held properly classified under paragraph 84.

No. 39688.—Protests 764501, etc., of Jed Frye & Co. (New York).

Fish Partly Boned.—Pickled salmon with the spinal bone removed, all the other bones, including the ribs, remaining in the fish, classified under paragraph 216, tariff act of 1913, is claimed free of duty as fish not otherwise provided for under paragraph 483.

Opinion by Brown, G. A. On the authority of Woodward *v.* United States (6 Ct. Cust. Appls., 372; T. D. 35918) the fish in question was held not boned within the meaning of paragraph 216. The claim of the protestants under paragraph 483 was sustained.

Before Board 2, May 5, 1916.

No. 39689.—Protests 792562, etc., of B. L. Strasburger & Co. et al. (New York).

Timers.—Timers classified at 30 per cent ad valorem under the provision for watches in paragraph 161, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by Fischer, G. A. On the authority of G. A. 7827 (T. D. 35971) the timers in question were held dutiable as manufactures of metal under paragraph 167.

No. 39690.—Protest 793392 of B. P. Ducas Co. (New York).

Antimony Salts.—Antimony salts classified under paragraph 144, tariff act of 1913, are claimed dutiable at 15 per cent ad valorem under paragraph 5.

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Opinion by FISCHER, G. A. On the authority of United States *v.* Innis (7 Ct. Cust. Appls., —; T. D. 36254) antimony salts were held dutiable as a chemical salt under paragraph 5, as claimed.

No. 39691.—Protests 770629-55601, etc., of A. B. Fiedler & Sons et al. (Chicago).

BEADED TRIMMINGS.—Trimmings and ornaments returned by the appraiser as composed in chief value of beads or spangles and in part of netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Willenborg *v.* United States (6 Ct. Cust Appls., 209; T. D. 35464) the trimmings in question were held dutiable under paragraph 333.

No. 39692.—Protest 783885 of B. Altman & Co. (New York).

PARASOLS, LACE TRIMMED—PARASOLS IN PART OF NETTING.—Parasols composed of silk and cotton, some lace trimmed and some in part of netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 383.

Opinion by COOPER, G. A. Certain parasols made in part of nettings were held dutiable under paragraph 383, as claimed. United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), followed. Lace-trimmed parasols, the trimming forming a part of the covering, were found to be covered with lace within the tariff sense, and held dutiable under paragraph 358.

No. 39693.—Protest 787723 of Colorado Tent & Awning Co. (Denver).

FLAX CANVAS, PLAIN WOVEN.—Canvas having a double warp and a single weft throughout, classified as a manufacture of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, is claimed dutiable as plain woven flax fabrics at 30 per cent under paragraph 283.

Opinion by COOPER, G. A. The canvas in question is of a perfectly plain appearance and the weave is uniform throughout. It was found to be plain woven and held dutiable under paragraph 283. G. A. 4097 (T. D. 19098), affirmed in United States *v.* Lamb (99 Fed., 262), and G. A. 7222 (T. D. 31588), affirmed in White *v.* United States (2 Ct. Cust. Appls., 327; T. D. 32054), followed.

No. 39694.—Protest 786243 of Archibald Best (New York).

FLAX FABRICS, PLAIN WOVEN.—The question here is whether certain flax fabrics are dutiable as manufactures of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, or as plain woven at 30 per cent under paragraph 283.

Opinion by COOPER, G. A. The merchandise found to be plain woven was held dutiable under paragraph 283.

No. 39695.—Protests 769419, etc., of Heyliger & Raubitschek et al. (New York), and protest 767661 of Ely & Walker Dry Goods Co. (St. Louis).

FIGURED COTTON CLOTH.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, and fabrics composed of cotton and artificial silk classified at 30 per cent under paragraph 266, are claimed dutiable as cotton cloth under paragraph 252.

Opinions by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the figured cotton cloth was held dutiable under paragraph 252. Protests overruled as to the fabrics composed in part of artificial silk classified under paragraph 266.

No. 39696.—Protests 766707, etc., of Ely & Walker Dry Goods Co. (St. Louis).

COTTON TOWELS.—Cotton Turkish towels classified as pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, and cotton and union towels classi-

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fied as Jacquard figured manufactures of cotton at 30 per cent under paragraph 258, are claimed dutiable as cotton towels at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. On the authority of G. A. 7656 (T. D. 35019), G. A. 7609 (T. D. 34819), and Abstract 38288, the towels in question were held dutiable under paragraph 264, as claimed.

BEFORE BOARD 1, MAY 8, 1916.

No. 39697.—Protest 760753 of P. C. Kuyper & Co. (New York).

BLUES CONTAINING FERROCYANIDE OF IRON—COLOR.—Merchandise invoiced as color in powder, classified as coal-tar color at 30 per cent ad valorem under paragraph 20, tariff act of 1913, is claimed dutiable at 20 per cent as blues containing ferrocyanide of iron under paragraph 52.

Opinion by MCCLELLAND, G. A. The merchandise, which was found to contain over 50 per cent of ferrocyanide of iron, was held dutiable under the first part of paragraph 52. Protest sustained in part.

No. 39698.—Protest 760614 of Haley-Hammond Co. (New York).

MYROBOLAN EXTRACT.—Myrobolan extract classified at 15 per cent under paragraph 22, tariff act of 1909, is claimed entitled to free entry or dutiable at various lower rates.

Opinion by MCCLELLAND, G. A. The merchandise is concededly an extract of vegetable origin The case was submitted upon stipulation of counsel to the effect that the commodity is similar to that passed upon in Abstract 37917, and held free of duty as a tanning material under paragraph 624, tariff act of 1913. The merchandise in question was held properly classified under the general provision for all extracts of vegetable origin suitable for tanning in paragraph 22, tariff act of 1909.

No. 39699.—Protests 772710, etc., of Badische Co. (New York).

COAL-TAR BASE.—Merchandise invoiced as "base," classified as coal-tar colors or bases at 30 per cent ad valorem under paragraph 20, tariff act of 1913, is claimed dutiable as coal-tar products at 15 per cent under paragraph 21.

Opinion by BROWN, G. A. On the authority of United States *v.* Badische (5 Ct. Cust. Appls., 226; T. D. 34400) the coal-tar base in question was held dutiable under paragraph 21, as claimed.

No. 39700.—Protest 791214 of J. J. Gavin & Co. (New York).

FLANNELS.—Merchandise classified as wool cloth or dress goods at 35 per cent ad valorem under paragraph 288 or 290, tariff act of 1913, is claimed dutiable at 25 or 30 per cent as flannels under paragraph 289.

Opinion by BROWN, G. A. The merchandise in question was held dutiable as flannels, as claimed, under paragraph 289. G. A. 7772 (T. D. 35703) followed.

BEFORE BOARD 2, MAY 8, 1916.

No. 39701.—Protests 785285-6203, etc., of May & Ellis Co. (New Orleans).

COTTON LACES AND NETS.—Cotton laces and nets classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

Opinion by HOWELL, G. A. From analyses it appears that the goods are composed wholly of cotton and that some are Jacquard figured. The evidence does not show the use to which the nets are adapted. Protests overruled. Carter *v.* United States (6 Ct. Cust. Appls., 253; T. D. 35475) and G. A. 7898 (T. D. 36363) cited.

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No. 39702.—Protest 770632-55376 of Mandel Bros. (Chicago).

COTTON NETS.—Merchandise classified as cotton nets at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as unfinished lace curtains at 45 per cent under paragraph 265.

Opinion by HOWELL, G. A. Protest unsupported; overruled.

BEFORE BOARD 3, MAY 8, 1916.

No. 39703.—Protest 791232 of C. A. Spencer & Son Co. (Boston).

VALONIA—MYROBOLAN EXTRACT—TANNING MATERIAL.—Valonia and myrobolan extracts classified as nonenumerated manufactured articles under paragraph 385, tariff act of 1913, are claimed free of duty as tanning material under paragraph 624.

Opinion by HAY, G. A. On the authority of Abstracts 37219 and 37917 the merchandise was held free of duty as tanning material under paragraph 624. Abstract 39651 followed as to protest fee.

No. 39704.—Protest 801869 of Park & Tilford (New York).

LEGALITY OF LIQUIDATION—ENTERED VALUE.—In this case the importer entered the merchandise at a value higher than it was invoiced because of pending reappraisement proceedings.

Opinion by HAY, G. A. On the authority of G. A. 7893 (T. D. 36347) protest overruled.

BEFORE BOARD 1, MAY 10, 1916.

No. 39705.—Protest 761522 of C. J. Tower (Buffalo).

CASHMERE YARN.

BROWN, *General Appraiser:* The merchandise was classified under paragraph 307, act of 1913, providing for "yarns made of the hair of the Angora goat, alpaca, and other like animals, 25 per centum ad valorem." The claim is that it is dutiable under paragraph 287 at 18 per cent as "yarns made wholly or in chief value of wool."

From the record the merchandise appears to be yarn made from the hair of the Cashmere goat.

In the case of Stursburg, Schell & Co., G. A. 4965 (T. D. 23179), Judge Somerville said, in classifying wool or hair of the Cashmere goat:

> We are of opinion that wool or hair of this kind falls within the enumeration stated in said paragraph 350 (act of 1897) describing "hair of the camel, Angora goat, alpaca, and other *like* animals."

The rule governing the classification of such hair or wool and manufactures therefrom under the act of 1913 was stated by Judge Hay in the case of Ringk & Co., G. A. 7649 (T. D. 34997) as follows:

> Where Congress has with such particularity provided a duty upon the hair of the Angora goat and various articles manufactured therefrom, as has been done in paragraphs 305, 306, 307, 308, and 309, all products of the hair of the Angora goat not included in those paragraphs come, we think, under the general provision for wool.

The same rule, of course, applies to the hair of the Cashmere goat.

This decision was affirmed by the Court of Customs Appeals in Crimmins *v.* United States (6 Ct. Cust. Appls., 137; T. D. 35392) wherein Judge De Vries said:

> Moreover, paragraphs 305, 306, 307, and 308 denounce particular rates of duty upon the hair of the Angora and alpaca goats. Congress has been precisely careful in this schedule to levy a duty upon every seemingly possible condition of the hair of the Angora goat. Thus paragraph 305 levies a duty upon the hair on the skin; 306 on tops made from the hair; 307 on the yarn made from the hair; 308 on all manufactures of every description made by any process wholly or in chief value of the hair of the Angora goat.

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As the merchandise in question, Cashmere yarn, is specially provided for in paragraph 307, it can not come under the provision for wool yarn in paragraph 287. Protest overruled.

No. 39706.—Protest 755772-52779 of G. W. Sheldon & Co. (Chicago).

SLIPPERS, LEATHER CHIEF VALUE.—Slippers composed of wool, felt, silk, and leather, classified as wool wearing apparel at 35 per cent ad valorem under paragraph 291, tariff act of 1913, are claimed to be in chief value of leather, free of duty under paragraph 530.

Opinion by BROWN, G. A. Leather was found to be the component material of chief value, and the slippers were held free of duty under paragraph 530, as claimed.

No. 39707.—Protests 774925, etc., of Abraham & Straus et al. (New York).

FLANNELS.—Merchandise invoiced as wool flannels, silk-stripe gauze flannel, all-wool gauze flannel, figured all-wool gauze flannel, silk-stripe embroidered gauze flannel, white silk-stripe gauze flannel, white all-wool gauze flannel, white Roxburghe flannel, Roxburghe flannel, silk-stripe wool gauze, Perfekta, and S. S. R. taffeta, classified as wool cloth or wool dress goods at 35 per cent ad valorem under paragraph 288 or 290, tariff act of 1913, is claimed dutiable as flannels under paragraph 289.

Opinion by BROWN, G. A. On the authority of G. A. 7772 (T. D. 35703), the merchandise in question was held dutiable as flannels under paragraph 289, as claimed.

No. 39708.—Protests 761681, etc., of Guy B. Barham et al. (Los Angeles and Seattle) and protests 780321, etc., of G. Ascione et al. (New York).

FISH, SKINNED OR BONED.—Merchandise classified as fish in tins at 15 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable as fish, skinned or boned, at three-fourths of 1 cent per pound under the last clause of the same paragraph.

Opinions by BROWN, G. A. On the authority of G. A. 7720 (T. D. 35365), affirmed in Tokstad-Burger *v.* United States (6 Ct. Cust. Appls., 441; T. D. 35981), the merchandise in question was held properly classified as fish in tins under paragraph 216.

BEFORE BOARD 2, MAY 10, 1916.

No. 39709.—Protests 776555, etc., of Kny-Scheerer Co. et al. (New York).

FORCEPS—SURGICAL INSTRUMENTS.—The appraiser reports that the merchandise consists of surgical forceps or other surgical instruments with two lever handles working on a pivot, with cutting, gripping, or pinching jaws. The articles in question were classified as nippers and pliers under paragraph 166, tariff act of 1913, and are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the authority of Koch *v.* United States (6 Ct. Cust. Appls., 534; T. D. 36148) the forceps and surgical instruments in question were held dutiable under paragraph 167, as claimed.

No. 39710.—Protests 758309, etc., of Geo. Legg et al. (New York).

TRIMMED HATS—SILK WEARING APPAREL.—Trimmed hats classified as in part of netting at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as silk wearing apparel at 50 per cent under paragraph 317, the question being whether or not the provision for articles of wearing apparel composed in chief value of silk (par. 317) is more specific than the provision in paragraph 358 for articles made in whole or in part of netting.

Opinion by HOWELL, G. A. On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the hats in question were held dutiable as silk wearing apparel under paragraph 317.

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No. 39711.—Protest 761444 of Haas Bros. (New York).

WEARING APPAREL IN PART OF BRAIDS AND NETTING.—Wearing apparel made in part of braids, ornaments, or netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as wool or silk wearing apparel under paragraph 291 or 317.

Opinion by HOWELL, G. A. One item found to be in part of lace ornamented with embroidery was held properly classified under paragraph 358. On the authority of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), the wearing apparel in chief value of wool was held dutiable under paragraph 291 and that in chief value of silk under paragraph 317.

No. 39712.—Protest 782989 of Snow's United States Sample Express Co. (New York).

WEARING APPAREL IN PART OF SPANGLES, ORNAMENTS, AND NETTING.—Articles of wearing apparel classified as appliquéd or made in part of ornaments and nettings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. The articles composed in chief value of silk were held dutiable as silk wearing apparel under paragraph 317. Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) and United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), followed.

No. 39713.—Protests 773066, etc., of C. B. Richard & Co. et al. (New York).

WEARING APPAREL IN PART OF NETTING.—Articles of wearing apparel made in part of netting, ornaments, braids, tuckings, rufflings, or articles from which threads have been drawn, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable under paragraphs 256, 317, and 291, respectively.

Opinion by HOWELL, G. A. The cotton wearing apparel was held dutiable under paragraph 256, the silk wearing apparel under paragraph 317, and the wool wearing apparel under paragraph 291. G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388) followed. Protests sustained in part.

No. 39714.—Protests 760456, etc., of E. Mittelstaedt (New York).

HAIR NETS.—Silk hair nets classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. On the authority of Abstract 36416 (T. D. 34756), affirmed in Proctor *v.* United States (6 Ct. Cust. Appls., 119; T. D. 35387), the hair nets in question were held properly classified under paragraph 358.

No. 39715.—Protest 772577 of Chas. F. Welek Importing Co. (St. Louis).

BEADED TRIMMINGS.—Goods classified as trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be composed in chief value of beads or spangles, dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. The goods were found to be composed in chief value of beads or spangles, as claimed, and were held dutiable under paragraph 333. Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

No. 39716.—Protests 787260, etc., of Franklin Simon & Co. et al. (New York).

SILK MUFFLERS.—Knitted silk mufflers, fringed, classified as silk wearing apparel at 50 per cent ad valorem under paragraph 317, tariff act of 1913, are claimed dutiable as mufflers at 40 per cent under paragraph 315.

Opinion by HOWELL, G. A. The mufflers in question were held dutiable under paragraph 315. United States *v.* Lines (5 Ct. Cust. Appls., 552; T. D. 35193) followed.

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No. 89717.—Protest 789124 of Adolf Fricke (New York).

POLISHING CLOTHS—MOP CLOTHS.—Polishing cloths and mop cloths classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 264.

Opinion by HOWELL, G. A. The goods were found to consist of polishing cloths and mop cloths composed of cotton. They were held dutiable under paragraph 264, as claimed.

BEFORE BOARD 3, MAY 10, 1916.

No. 89718.—Protest 785197 of Meier & Frank Co. (Portland, Oreg.).

DEPRECIATED CURRENCY.

WAITE, *General Appraiser:* The goods in question in this case were purchased in Germany and invoiced in marks. The record does not disclose whether there was ever an appraisement of these goods or not. It is, however, to be presumed, we think, that there was, and that the liquidation was on the basis of an appraisal.

The protest claims an allowance of 5 per cent discount under the provisions of section 4, paragraph J, subsection 7, act of 1913, which claim is overruled as unsupported. The protest also claims as follows:

We further claim the dutiable value on this entry should have been based on the current rate of exchange for a German mark at the time the invoice was certified by the American consul, which invoice showed the goods to have been purchased in depreciated German marks, the rate being stamped on said consular invoice. Department letter under date of March 19, 1915, authorizes collectors to withhold liquidation where invoices show depreciated rate, but said letter was not made public in time for us to make proper notation on our entry.

The collector reports with reference to the second claim as follows:

The invoice and entry had notation that the value of the German mark used in this invoice was as follows: The rate of exchange is to-day in Chemnitz $100, equal to 460 marks. Entry was liquidated at gold valuation of a mark equal $0.238, as per instructions received from the Secretary of the Treasury.

The stamp of the rate of exchange on the invoice and entry referred to appears to be the following, fixed by a stamp in the declaration of David Jacobs, who describes himself as agent of the purchaser: "The rate of exchange is to-day in Chemnitz, $100 =460 marks."

The law directs under what circumstances the collector is to recognize depreciated exchange. The value of the mark proclaimed for the quarter in which the importation was made is to govern, as pointed out in G. A. 7679 (T. D. 35122), except when the invoice is accompanied by a currency certificate of depreciation pursuant to an Executive order, as provided for in section 2903 of the Revised Statutes (sec. 5603. Comp. Stat., 1913), or where the proclaimed value has been modified by the Secretary of the Treasury pursuant to the provisions of section 25, tariff act of 1894. The proclaimed value does not seem to have been varied so far as this case is concerned. The certificate of the agent of the purchaser furnishes no authority for varying the proclaimed value which has been adopted. The importers have not seen fit to introduce any evidence in this case, and we are not clear that it would have been of any use if they had, not having availed themselves of the statutes which permit variation of the value of the money in which the goods were purchased. The protest is therefore overruled.

No. 89719.—Protest 787515 of Rockhill & Vietor (New York).

DEPRECIATED CURRENCY.—The question here is whether goods imported from Shanghai, China, were purchased with American or Mexican dollars. There is no designation on the invoice to indicate whether American or Mexican dollars was intended.

Opinion by WAITE, G. A. Protest unsupported; overruled.

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No. 39720.—Protests 793479, etc., of General Electric Co. (Boston).

MODELS.—Articles classified as manufactures of wood under paragraph 176, tariff act of 1913, are claimed entitled to free entry as models of invention under paragraph 551.

Opinion by WAITE, G. A. Protests unsupported; overruled.

No. 39721.—Protest 799543 of F. B. Vandegrift & Co. (New York).

STAINED-GLASS WINDOWS.—Stained-glass windows imported to be used in houses of worship are claimed entitled to free entry under paragraph 655, tariff act of 1913.

Opinion by WAITE, G. A. On the authority of Perry *v.* United States (6 Ct. Cust. Appls., 201; T. D. 35462) the window glass in question was held free of duty under paragraph 655, as claimed.

No. 39722.—Protest 799616 of Wm. A. Brown & Co. (New York).

OLIVE KERNELS.—The appraiser described the merchandise as the red kernel of the olive seed, unpeeled. It was classified as seed under paragraph 212, tariff act of 1913, and is claimed dutiable as nuts not specially provided for at 1 cent per pound under paragraph 226.

Opinion by WAITE, G. A. On the authority of Abstract 39044 the olive kernels in question were held dutiable under paragraph 226, as claimed.

(T. D. 36405.)

Neutrality—Status of armed merchant vessels in neutral ports, etc.

Memorandum by the Department of State on the status of armed merchant vessels in neutral ports and on the high seas, published for the information of collectors of customs and others concerned.

TREASURY DEPARTMENT, *May 12, 1916.*

To collectors of customs and others concerned:

The appended copy of a memorandum prepared by the Department of State relative to the status of armed merchant vessels in neutral ports and on the high seas is published for the information of collectors of customs and others concerned.

WM. P. MALBURN, *Assistant Secretary.*

[By direction of the President, a memorandum was prepared during March, 1916, in regard to the *status* of armed merchant vessels in neutral ports and on the high seas. This memorandum is now made public as a statement of this Government's attitude on that subject.]

Memorandum on the Status of Armed Merchant Vessels.

DEPARTMENT OF STATE,
Washington, March 25, 1916.

I.

The *status* of an armed merchant vessel of a belligerent is to be considered from two points of view: *First*, from that of a neutral when the vessel enters its ports; and, *second*, from that of an enemy when the vessel is on the high seas.

FIRST.—AN ARMED MERCHANT VESSEL IN NEUTRAL PORTS.

(1) It is necessary for a neutral Government to determine the *status* of an armed merchant vessel of belligerent nationality which enters its jurisdiction, in order

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that the Government may protect itself from responsibility for the destruction of life and property by permitting its ports to be used as bases of hostile operations by belligerent warships.

(2) If the vessel carries a commission or orders issued by a belligerent Government and directing it under penalty to conduct aggressive operations, or if it is conclusively shown to have conducted such operations, it should be regarded and treated as a warship.

(3) If sufficient evidence is wanting, a neutral Government, in order to safeguard itself from liability for failure to preserve its neutrality, may reasonably presume from the facts the *status* of an armed merchant vessel which frequents its waters. There is no settled rule of international law as to the sufficiency of evidence to establish such a presumption. As a result a neutral Government must decide for itself the sufficiency of the evidence which it requires to determine the character of the vessel. For the guidance of its port officers and other officials a neutral Government may therefore declare a standard of evidence, but such standard may be changed on account of the general conditions of naval warfare or modified on account of the circumstances of a particular case. These changes and modifications may be made at any time during the progress of the war, since the determination of the *status* of an armed merchant vessel in neutral waters may affect the liability of a neutral Government.

SECOND.—AN ARMED MERCHANT VESSEL ON THE HIGH SEAS.

(1) It is necessary for a belligerent warship to determine the *status* of an armed merchant vessel of an enemy encountered on the high seas, since the rights of life and property of belligerents and neutrals on board the vessel may be impaired if its *status* is that of an enemy warship.

(2) The determination of warlike character must rest in no case upon presumption but upon conclusive evidence, because the responsibility for the destruction of life and property depends on the actual facts of the case and can not be avoided or lessened by a standard of evidence which a belligerent may announce as creating a presumption of hostile character. On the other hand, to safeguard himself from possible liability for unwarranted destruction of life and property the belligerent should, in the absence of conclusive evidence, act on the presumption that an armed merchantman is of peaceful character.

(3) A presumption based solely on the presence of an armament on a merchant vessel of an enemy is not a sufficient reason for a belligerent to declare it to be a warship and proceed to attack it without regard to the rights of the persons on board. Conclusive evidence of a purpose to use the armament for aggression is essential. Consequently an armament which a neutral Government, seeking to perform its neutral duties, may presume to be intended for aggression, might in fact on the high seas be used solely for protection. A neutral Government has no opportunity to determine the purpose of an armament on a merchant vessel unless there is evidence in the ship's papers or other proof as to its previous use, so that the Government is justified in substituting an arbitrary rule of presumption in arriving at the *status* of the merchant vessel. On the other hand, a belligerent warship can on the high seas test by actual experience the purpose of an armament on an enemy merchant vessel, and so determine by direct evidence the *status* of the vessel.

SUMMARY.

The *status* of an armed merchant vessel as a warship in neutral waters may be determined, in the absence of documentary proof or conclusive evidence of previous aggressive conduct, by presumption derived from all the circumstances of the case.

The *status* of such vessel as a warship on the high seas must be determined only upon conclusive evidence of aggressive purpose, in the absence of which it is to be presumed that the vessel has a private and peaceable character and it should be so treated by an enemy warship.

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In brief, a neutral Government may proceed upon the presumption that an armed merchant vessel of belligerent nationality is armed for aggression, while a belligerent should proceed on the presumption that the vessel is armed for protection. Both of these presumptions may be overcome by evidence—the first by secondary or collateral evidence, since the fact to be established is negative in character; the second by primary and direct evidence, since the fact to be established is positive in character.

II.

The character of the evidence upon which the *status* of an armed merchant vessel of belligerent nationality is to be determined when visiting neutral waters and when traversing the high seas having been stated, it is important to consider the rights and duties of neutrals and belligerents as affected by the *status* of armed merchant vessels in neutral ports and on the high seas.

First.—The Relations of Belligerents and Neutrals as Affected by the Status of Armed Merchant Vessels in Neutral Ports.

(1) It appears to be the established rule of international law that warships of a belligerent may enter neutral ports and accept limited hospitality there upon condition that they leave, as a rule, within 24 hours after their arrival.

(2) Belligerent warships are also entitled to take on fuel once in three months in ports of a neutral country.

(3) As a mode of enforcing these rules a neutral has the right to cause belligerent warships failing to comply with them, together with their officers and crews, to be interned during the remainder of the war.

(4) Merchantmen of belligerent nationality, armed only for purposes of protection against the enemy, are entitled to enter and leave neutral ports without hindrance in the course of legitimate trade.

(5) Armed merchantmen of belligerent nationality under a commission or orders of their Government to use, under penalty, their armament for aggressive purposes, or merchantmen which, without such commission or orders, have used their armaments for aggressive purposes, are not entitled to the same hospitality in neutral ports as peaceable armed merchantmen.

Second.—The Relations of Belligerents and Neutrals as Affected by the Status of Armed Merchant Vessels on the High Seas.

(1) Innocent neutral property on the high seas can not legally be confiscated, but is subject to inspection by a belligerent. Resistance to inspection removes this immunity and subjects the property to condemnation by a prize court, which is charged with the preservation of the legal rights of the owners of neutral property.

(2) Neutral property engaged in contraband trade, breach of blockade, or unneutral service obtains the character of enemy property and is subject to seizure by a belligerent and condemnation by a prize court.

(3) When hostile and innocent property is mixed, as in the case of a neutral ship carrying a cargo which is entirely or partly contraband, this fact can only be determined by inspection. Such innocent property may be of uncertain character, as it has been frequently held that it is more or less contaminated by association with hostile property. For example, under the Declaration of London (which, so far as the provisions covering this subject are concerned, has been adopted by all the belligerents) the presence of a cargo, which in bulk or value consists of 50 per cent contraband articles, impresses the ship with enemy character and subjects it to seizure and condemnation by a prize court.

(4) Enemy property, including ships and cargoes, is always subject to seizure and condemnation. Any enemy property taken by a belligerent on the high seas is a total loss to the owners. There is no redress in a prize court. The only means of

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avoiding loss is by flight or successful resistance. Enemy merchant ships have, therefore, the right to arm for the purpose of self-protection.

(5) A belligerent warship is any vessel which, under commission or orders of its Government imposing penalties or entitling it to prize money, is armed for the purpose of seeking and capturing or destroying enemy property or hostile neutral property on the seas. The size of the vessel, strength of armament, and its defensive or offensive force are immaterial.

(6) A belligerent warship has, incidental to the right of seizure, the right to visit and search all vessels on the high seas for the purpose of determining the hostile or innocent character of the vessels and their cargoes. If the hostile character of the property is known, however, the belligerent warship may seize the property without exercising the right of visit and search which is solely for the purpose of obtaining knowledge as to the character of the property. The attacking vessel must display its colors before exercising belligerent rights.

(7) When a belligerent warship meets a merchantman on the high seas which is known to be enemy owned and attempts to capture the vessel, the latter may exercise its right of self-protection either by flight or by resistance. The right to capture and the right to prevent capture are recognized as equally justifiable.

(8) The exercise of the right of capture is limited, nevertheless, by certain accepted rules of conduct based on the principles of humanity and regard for innocent property, even if there is definite knowledge that some of the property, cargo, as well as the vessel, is of enemy character. As a consequence of these limitations, it has become the established practice for warships to give merchant vessels an opportunity to surrender or submit to visit and search before attempting to seize them by force. The observance of this rule of naval warfare tends to prevent the loss of life of noncombatants and the destruction of innocent neutral property which would result from sudden attack.

(9) If, however, before a summons to surrender is given, a merchantman of belligerent nationality, aware of the approach of an enemy warship, uses its armament to keep the enemy at a distance, or after it has been summoned to surrender it resists or flees, the warship may properly exercise force to compel surrender.

(10) If the merchantman finally surrenders, the belligerent warship may release it or take it into custody. In the case of an enemy merchantman it may be sunk, but only if it is impossible to take it into port, and provided always that the persons on board are put in a place of safety. In the case of a neutral merchantman, the right to sink it in any circumstance is doubtful.

(11) A merchantman entitled to exercise the right of self-protection may do so when certain of attack by an enemy warship, otherwise the exercise of the right would be so restricted as to render it ineffectual. There is a distinct difference, however, between the exercise of the right of self-protection and the act of cruising the seas in an armed vessel for the purpose of attacking enemy naval vessels.

(12) In the event that merchant ships of belligerent nationality are armed and under commission or orders to attack in all circumstances certain classes of enemy naval vessel for the purpose of destroying them, and are entitled to receive prize money for such service from their Government or are liable to a penalty for failure to obey the orders given, such merchant ships lose their *status* as peaceable merchant ships and are to a limited extent incorporated in the naval forces of their Government, even though it is not their sole occupation to conduct hostile operations.

(13) A vessel engaged intermittently in commerce and under a commission or orders of its Government imposing a penalty, in pursuing and attacking enemy naval craft, possesses a *status* tainted with a hostile purpose which it can not throw aside or assume at will. It should, therefore, be considered as an armed public vessel and receive the treatment of a warship by an enemy and by neutrals. Any person taking passage on such a vessel can not expect immunity other than that accorded persons who are on

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board a warship. A private vessel, engaged in seeking enemy naval craft, without such a commission or orders from its Government, stands in a relation to the enemy similar to that of a civilian who fires upon the organized military forces of a belligerent, and is entitled to no more considerate treatment.

(T. D. 36406.)

Philippine certificates of origin.

Customs officers instructed relative to the execution of Philippine certificates of origin covering tobacco products.

TREASURY DEPARTMENT, *May 17, 1916.*

To collectors of customs:

The department is informed that Mr. C. M. Hoskins, chief clerk of the Bureau of Internal Revenue for the Philippine Islands, was authorized in an order dated March 25, 1916, to sign, by himself, for the collector of internal revenue for the Philippine Islands, certificates of origin covering tobacco products shipped from the islands to the United States, such documents to be authenticated by the official seal of the collector.

Customs officers are therefore hereby instructed to accept such certificates so signed when they bear the official seal of the said collector.

T. D. 34749 of September 3, 1914, is amended accordingly.

(78348.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36407.)

Drawback on automobile jackshafts and transmissions.

Drawback on jackshafts and transmissions manufactured by the American Die & Tool Co., of Reading, Pa., with the use of imported ball bearings.

TREASURY DEPARTMENT, *May 17, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on jackshafts and transmissions manufactured by the American Die & Tool Co., of Reading, Pa., with the use of imported ball bearings.

The allowance shall not exceed the number of imported ball bearings appearing in the exported articles, as shown by the sworn statement of the manufacturers, dated March 13, 1916, which is transmitted herewith. There is also transmitted herewith a supplemental sworn statement of the manufacturers, dated May 1, 1916.

Drawback may be allowed under these regulations on jackshafts and transmissions exported on or after February 29, 1916.

Respectfully, ANDREW J. PETERS,

(101006-55.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36408.)

Drawback on dyes.

T. D. 35555 of June 28, 1915, extended to cover dyes manufactured by the American Dyewood Co., of New York, N. Y., and exported by the Johnson-Richardson Co., of Burlington, Vt.

TREASURY DEPARTMENT, *May 17, 1916.*

SIR: The department's regulations of June 28, 1915 (T. D. 35555), providing for drawback on dyes and coal-tar preparations manufactured by the American Dyewood Co., of New York, N. Y., with the use of imported coal-tar products, are hereby extended to provide for drawback on such dyes when packed and exported by the Johnson-Richardson Co., of Burlington, Vt.

The quantities of dyes which may be taken as a basis for the allowance of drawback shall not exceed the quantities appearing in the exported packages, as shown in the sworn statement and schedule of the Johnson-Richardson Co., dated April 4, 1916, which is transmitted herewith.

These regulations supersede and abolish all other authority for the payment of drawback on dyes exported by the Johnson-Richardson Co.

Respectfully, ANDREW J. PETERS,
(91708.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36409.)

Palm-leaf baskets.

Palm-leaf baskets dutiable at the rate of 15 per cent ad valorem under paragraph 368, tariff act of 1913, as manufactures of palm leaf not specially provided for.

TREASURY DEPARTMENT, *May 18, 1916.*

SIR: The department duly received your letter of the 27th ultimo, inclosing a communication from the appraiser at your port relative to a variance in practice between his office and the appraiser at New Orleans in the classification of palm-leaf baskets.

It appears that the baskets are of various sizes, without handles, made of palm-leaf strips, woven. The appraiser at your port expresses the opinion, in which you concur, that the baskets are dutiable as a manufacture of palm leaf under paragraph 368 of the tariff act at the rate of 15 per cent ad valorem, while the appraiser at New Orleans is of the opinion that as palm-leaf baskets are similar in quality, texture, and use to which they may be applied to baskets made of straw, as provided for in paragraph 175, and as paragraph 368 does

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not specifically provide for baskets, following the rule in paragraph 386, the baskets are properly classifiable under paragraph 175 of the tariff and dutiable at 25 per cent ad valorem.

As the articles are manufactures of palm leaf, which are provided for under paragraph 368, the similitude clause would not be applicable thereto (T. D. 31235 and T. D. 32351), and they would be subject to classification as baskets under the provision of paragraph 175 only if the said provision is more specific. Paragraph 175 is as follows:

Blinds, curtains, shades, or screens any of the foregoing in chief value of bamboo, wood, straw, or compositions of wood, not specially provided for in this section, 20 per centum ad valorem; if stained, dyed, painted, printed, polished, grained, or creosoted, and baskets in chief value of like material, 25 per centum ad valorem.

The department is of the opinion that the term "like material" in the said paragraph means such materials as are specified in the preceding part of the paragraph, namely, bamboo, wood, straw, or compositions of wood. Palm leaf not being one of the specified materials, the said paragraph does not apply to the baskets in question.

In view of the foregoing, the department concurs in the views that baskets of the character in question are properly dutiable at the rate of 15 per cent ad valorem under paragraph 368 of the tariff act of 1913 as manufactures of palm leaf not specially provided for. You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(103928.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36410.)

Drawback on watch chains.

Drawback on coat-lapel watch chains manufactured by F. H. Noble & Co., of Chicago, Ill., with the use of imported swivels in combination with either imported or domestic chains and domestic enameled buttons.

TREASURY DEPARTMENT, *May 18, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on coat-lapel watch chains manufactured by F. H. Noble & Co., of Chicago, Ill., with the use of imported swivels in combination with either imported or domestic chains and domestic enameled buttons.

A record shall be kept, showing, in the case of each lot of coat-lapel watch chains manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, and the identity of the imported swivels appearing therein. Where imported chain is used the record shall also show the quantity and kind of

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chain appearing in the finished articles and the identity thereof. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance for each coat-lapel watch chain exported may equal one imported swivel and the quantity of imported chain appearing therein, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated April 12, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on coat-lapel watch-chains exported on or after April 17, 1916.

Respectfully, ANDREW J. PETERS,
(104821.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 36411.)

Drawback on automobile rear axles.

Drawback on automobile rear axles manufactured by the Otis Elevator Co., of Buffalo, N. Y., with the use of imported steel differential shafts, worm shafts, and brake liners.

TREASURY DEPARTMENT, *May 18, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on automobile rear axles manufactured by the Otis Elevator Co., of Buffalo, N. Y., with the use of imported steel differential shafts, worm shafts, and brake liners.

The allowance shall not exceed the quantities of imported materials used in the manufacture of the exported automobile rear axles, as shown by the sworn statement of the manufacturers, dated May 2, 1916, transmitted herewith, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

Drawback may be allowed under these regulations on automobile rear axles exported on or after March 24, 1916.

Respectfully, ANDREW J. PETERS,
(104910.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36412.)

Common carrier.

Discontinuance of the bonded route of the Manhattan Navigation Co. as a common carrier for the transportation of dutiable merchandise.

TREASURY DEPARTMENT, *May 20, 1916.*

SIR: Referring to previous correspondence and particularly to the letter addressed to you on the 11th of February last, wherein you

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were instructed to require the execution, not later than the 17th instant, of a new bond by the Manhattan Navigation Co. as a common carrier of dutiable merchandise, and it appearing that said new bond has not been prepared and approved by the department, the bonded route of said company for the transportation of dutiable merchandise under sections 3000, 3001, 3005, and 3006 of the Revised Statutes and the act of June 10, 1880, and all acts relating thereto governing the transportation of dutiable goods without appraisement (T. D. 30651), is hereby discontinued. The fact and date of discontinuance should be noted by you on the copy of the bond of said company on file in your office, which should be retained without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(66419.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36413.)

Drawback on braids.

Drawback on braids manufactured by L. B. Simonds & Co., of New York, N. Y., wholly with the use of dyed imported artificial silk or horsehair, or with the use of such materials in combination with imported gelatin spangles.—T. D. 30830 of July 26, 1910, and T. D. 31137 of December 23, 1910, revoked.

TREASURY DEPARTMENT, *May 20, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on braids manufactured by L. B. Simonds & Co., of New York, N. Y., wholly with the use of dyed imported artificial silk or horsehair, or with the use of such imported material in combination with imported gelatin spangles.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated April 28, 1916, transmitted herewith, showing, in the case of each lot of braid manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the kinds and quantities of braids produced, and the quantity and identity of each kind of imported material appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of each kind of imported material appearing in the exported braids, as shown by the abstract from the manufacturing record.

T. D. 30830 of July 26, 1910, and T. D. 31137 of December 23, 1910, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(75904.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36414.)

Drawback on soda fountains.

Drawback on soda fountains manufactured by the Liquid Carbonic Co., of Chicago, Ill., with the use of imported rough marble and onyx blocks.—T. D. 31578 of May 10, 1911, revoked.

TREASURY DEPARTMENT, *May 20, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on soda-water fountains manufactured by the Liquid Carbonic Co., of Chicago, Ill., with the use of imported rough marble and onyx blocks.

A manufacturing record shall be kept, showing, in the case of each soda fountain manufactured for exportation with benefit of drawback, the job number and date of manufacture thereof, the identity of the imported marble and onyx used in its manufacture, the number of pieces of imported marble and onyx appearing therein, the dimensions of the several pieces of each kind of imported material, and, if an allowance to compensate for polishing and finishing waste is to be claimed, the number of polished and finished surfaces of each piece.

The quantities of imported marble and onyx which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported soda fountains, as shown by the abstract from the manufacturing record, plus an addition of three-sixteenths of 1 inch to the length, width, and depth of each piece of imported marble and onyx to compensate for cutting waste, and a further addition of one-eighth of 1 inch over the area of each polished and finished surface to compensate for polishing and finishing waste.

The sworn statement of the manufacturers, dated April 28, 1916, is transmitted herewith for filing in your office.

T. D. 31578 of May 10, 1911, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(86630.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 36415.)

Drawback on fuses.

Drawback on fuses manufactured in part by the General Electric Co., of Pittsfield, Mass., and in part by the Artillery Fuse Co., of Wilmington, Del., with the use of castings manufactured by the Aluminum Castings Co., of Fairfield, Conn., with the use of imported aluminum or aluminum alloys.

TREASURY DEPARTMENT, *May 20, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on fuses manufactured in part by the General Electric Co., of Pittsfield, Mass., and in part by the Artillery Fuse Co., of Wilmington, Del., with the use of castings manufactured by the Aluminum Castings Co., of Fairfield, Conn., with the use of imported aluminum or aluminum alloys, as provided for in T. D. 33454 of May 23, 1915.

A manufacturing record shall be kept by the General Electric Co. in the manner described in its sworn statement of March 3, 1916, transmitted herewith, showing, in the case of each lot of castings received from the Aluminum Castings Co., the lot number and date of delivery thereof, the number of each kind of casting contained in the lot, the net weight of the castings of each kind, the number and net weight of finished castings of each kind produced therefrom and shipped to the Artillery Fuse Co., the number of spoiled and defective castings out of the lot, and the quantity of finishing waste resulting.

A record shall be kept by the Artillery Fuse Co. in the manner described in its sworn statement, dated April 28, 1916, also transmitted herewith, showing, in the case of each lot of finished castings received from the General Electric Co., the lot number and date of delivery thereof, the number of castings of each kind contained in the lot, and the number of castings of each kind rejected. The records of the Artillery Fuse Co. shall also show the total number of finished fuses produced from castings furnished by the General Electric Co. under the contract designated by the symbol "GP." Sworn abstracts from the above records shall be furnished in connection with the drawback claim.

As all fuses manufactured under the contract mentioned above are to be exported, the entire transaction may be incorporated in one set of certificates of manufacture, certificates of manufacture and delivery, and abstracts from the manufacturing records.

The allowance shall not exceed the quantity of imported aluminum appearing in the exported fuses, as shown by the abstracts from the manufacturing records of the Aluminum Castings Co. and the General Electric Co., with an addition to compensate for finishing waste incurred in their manufacture, the allowance for such waste to be reduced according to the quantity of imported aluminum which the value thereof will replace.

Drawback may be allowed under these regulations on fuses exported on or after December 1, 1915.

Respectfully, ANDREW J. PETERS,
(103766-8.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36416.)

Drawback on guns and gun mounts.

Drawback on guns and gun mounts manufactured by the Bethlehem Steel Corporation, of South Bethlehem, Pa., with the use of imported parts.

TREASURY DEPARTMENT, *May 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on guns and gun mounts manufactured by the Bethlehem Steel Co., of South Bethlehem, Pa., with the use of imported ball races, coil springs, and similar imported parts.

A manufacturing record shall be kept, showing, in the case of each gun and gun mount manufactured for exportation with benefit of drawback, the date of manufacture thereof and the number, character, and identity of the imported parts appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry. The allowance shall not exceed the number of imported parts appearing in the exported guns and gun mounts, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated April 29, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on guns and gun mounts exported on and after February 2, 1916.

Respectfully, ANDREW J. PETERS,
(58807.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36417.)

Drawback on fuses.

Drawback on time fuses manufactured by the Recording & Computing Machine Co., of Dayton, Ohio, with the use of imported aluminum.

TREASURY DEPARTMENT, *May 20, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on time fuses manufactured by the Recording & Computing Machine Co., of Dayton, Ohio, with the use of imported aluminum.

A record shall be kept in the manner described in the sworn statement of the company, dated April 28, 1916, transmitted herewith,

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and at such times as it may be practicable to make a complete identification of all the aluminum used during the preceding period of manufacture. An abstract from such records and a certificate of manufacture shall be filed, showing the number of time fuses manufactured during such period, the quantity, identity, and value of imported aluminum, and the quantity and value of domestic aluminum used in the manufacture thereof, the quantity of aluminum appearing in the finished fuses, the loss by oxidation in melting the aluminum and remelting the scrap and machining, drilling, and shearing wastes, and, where scrap and machining, drilling, and shearing wastes are sold instead of being recast, the value of such waste.

The allowance shall not exceed the quantity of imported aluminum appearing in the exported time fuses, as shown by the abstract from the manufacturing record, with an addition to compensate for loss by oxidation and valuable waste, if any, the loss for valuable waste to be reduced according to the quantity of imported aluminum which the value thereof will replace.

Drawback may be allowed under these regulations on time fuses exported on or after August 12, 1915.

Respectfully, ANDREW J. PETERS,
(63567-2.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36418.)

Analysis of samples of seized opium.

Collectors of customs informed of the procedure to obtain the analysis of samples of opium seized under the act of January 17, 1914 (T. D. 34221).

TREASURY DEPARTMENT, *May 22, 1916.*

To collectors of customs:

Samples of opium requiring analysis seized under the act of January 17, 1914 (T. D. 34221), at ports at which there is no customs chemist, should be forwarded for analysis and report thereon to the Commissioner of Internal Revenue, Treasury Department, Washington, D. C., marked "Laboratory."

It has been arranged that the Department of Justice will bear the expenses of the shipment of such samples, and that in case of prosecution that department will also pay the traveling expenses of the expert who examined the samples in the event that his testimony shall be necessary.

(90956.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36419—G. A. 7908.)

Surface-coated paper used for photographic purposes.

Surface-coated paper, known as "Roentgen-ray" or "X-ray" paper, used in connection with X-ray photography, is properly classifiable under the provision in paragraph 324, act of 1913, for "albuminized or sensitized paper or paper otherwise surface coated for photographic purposes," rather than dutiable under the provision in said paragraph for "all other paper with coated surface or surfaces not specially provided for."

United States General Appraisers, New York, May 19, 1916.

In the matter of protest 779695 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Walden & Webster (*Edward F. Jordan* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* In his report, which has been offered and received in evidence herein, the local appraiser states that the merchandise in question, which is described on the invoice as "Heyden Folie," is known as a Roentgen-ray paper or an X-ray paper; that it is coated with a preparation made by dissolving salts of the metal barium and platinum in water and adding thereto an adhesive substance.

Duty was levied thereon at the rate of 35 per cent ad valorem under the provision in paragraph 324 of the act of 1913 for "all other paper with coated surface or surfaces not specially provided for." The importers do not question the fact that the paper is surface coated, but they contend that it is specifically provided for and should have been classified for duty by the collector at the rate of 25 per cent ad valorem under the provision in said paragraph for "albuminized or sensitized paper or paper otherwise surface coated for photographic purposes." Specifically the claim, as stated by counsel for the importers at the time of hearing, is that the paper is surface coated for photographic purposes.

With a view to establishing the validity of this claim the importers introduced herein the testimony, which stands uncontradicted, of two witnesses.

One of these witnesses, Max Fritz Ernst Rudloff, testified that the paper designated on the invoice as "Heyden Folien" or "Heyden Folier" is sold only to the Kny-Scheerer Co.

The other witness, A. Kielenbeck, testified that he is employed as salesman and X-ray demonstrator in the electric photographic department of the Kny-Scheerer Co.; that the paper is used as a screen and

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is placed between the photographic plate and the X-ray machine; that the X-ray fluoresces this screen to a blue color; that the X-ray plate is very sensitive to blue light; and that the shadows which are thrown upon the screen by the X-ray machine reflect on the plate; that as an ultimate result of said operation there is produced a permanent X-ray picture of the object portrayed; that although it is possible to make an exposure on the X-ray plate without employing this screen, nevertheless the use of the latter not only serves to reduce to one-tenth the time required in making a plate exposure, but that the screen also prevents the burning of the object which is being photographed.

The contention of the Government that this process is not necessarily a photographic operation presents for consideration these two questions:

(1) Is the work accomplished by the X-ray machine photography within the common and ordinary understanding of that term?

(2) Is the purpose for which this paper is employed a photographic purpose within the meaning of the provision in paragraph 324 here under consideration?

It will at once be observed that the answer to the second question is largely and necessarily dependent upon the determination reached regarding the first.

"Photography" is defined by the Standard Dictionary as—

> The process of forming and fixing an image of an object or objects by the chemical action of light. * * * Also, the art or business of producing such images and of reproducing them by heliacal printing.

And the same authority defines the term "photograph" as applying to "a picture taken by photography."

Webster defines "photography" as "the art or process of producing images on sensitized surfaces by the chemical action of light (or, less strictly, of any form of radiant energy)," and the term "photograph" as a "picture or likeness obtained by photography."

Inasmuch, therefore, as the undisputed testimony herein shows that, as a result of the operation of the X-ray upon the X-ray plate, with the aid of this paper screen, and through the chemical action of light, permanent pictures or images of objects are produced, there exists no doubt in our minds but that the process employed accurately responds to the description of what constitutes "photography" in the common and ordinary acceptation of that term.

Therefore, it necessarily follows that the first of the above questions must be answered in the affirmative.

There remains, then, to be determined whether paper which has been surface coated for use in the production of X-ray pictures is properly included within the scope of the provision in paragraph 324 for "paper otherwise surface coated for photographic purposes."

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We have not the benefit of a brief from the counsel for the Government. However, from the nature of the questions propounded by him at the trial it is at least fair to assume that he takes the position that only such surface-coated papers as are used to receive directly, and which permanently retain pictures produced by a camera, are properly covered by the provision for surface-coated papers used for photographic purposes.

With such contention, however, we can not agree. If Congress had intended to so limit the operation of the said provision it would not have employed the words "or paper otherwise surface coated for photographic purposes," but would in all likelihood have used some such expression as "albumenized or sensitized photographic papers." As the provision stands at present, it is indicative of a congressional intent to make provision for all surface-coated papers which are employed for photographic purposes.

In fact, the language of the present provision covering this class of merchandise is precisely similar to that employed in the corresponding provisions of the acts of 1909 and 1897, although the latter acts imposed higher rates of duty on such merchandise than are exacted under the present act. In reversing its policy with respect to the rates of duty on this class of papers, if Congress intended to broaden or restrict the scope of the provision, it would have made such intention clearly manifest by a change in the language of said provision.

In Abstract 24528 (T. D. 31207), which is referred to in the report of the appraiser as authority for the advisory classification of this paper at the higher rate of duty under paragraph 324, the only point decided by this board was that paper of the character of that here in question was not classifiable as metal-coated paper, but rather under the provision for surface-coated paper. The claim was not there alleged that the paper was specially coated for photographic purposes. It appears, therefore, that this particular claim is raised here for the first time, and we are satisfied from the facts in the case that the contention is well founded. Being intended for use as a screen to be placed in front of the film or plate in making X-ray pictures for the purpose of reducing the time of exposure of the plate, as well as to prevent the burning of the object which is being photographed, it is perfectly obvious that the use of this paper has to do only with the photographic part of the operation, and not with the X-ray apparatus itself. The latter, as before stated, may be used without the screen by lengthening the time of the exposure of the plate.

We are therefore of opinion that the paper in question is properly classifiable as a surface-coated paper used for photographic purposes. Consequently, that claim in the protest is hereby sustained, and the decision of the collector is modified accordingly.

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(T. D. 36420—G. A. 7909.)

Pile fabrics, appliquéd.

Pile fabrics made from silk or Angora goat hair, and on the surface of which are superimposed imitation ermine tails at regular intervals to imitate real ermine, are properly dutiable at 60 per cent ad valorem under paragraph 358, tariff act of 1913, as appliquéd articles of "whatever yarns, threads, or filaments composed," rather than as pile fabrics composed in chief value of silk or hair of the Angora goat.—G. A. 4481 (T. D. 21375), United States *v.* Hamburger Levine Co. (5 Ct. Cust. Appls., 217; T. D. 34382), and Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) cited and followed.

United States General Appraisers, New York, May 19, 1916.

In the matter of protests 778664, etc., of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Walden & Webster (*Henry J. Webster* of counsel) for the importers.

Bert Hansen, Assistant Attorney General (*Martin T. Baldwin* and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; Cooper, G. A., not participating).

HOWELL, *General Appraiser:* The merchandise is described by the appraiser in his answer to the protests as follows:

The merchandise consists of silk plush, 48 inches in width, made in imitation of ermine, having appliquéd thereon, respectively, about 5 or 7 inches apart, imitation tails of fur skins. It was returned for duty as appliquéd silk fabrics at 60 per cent ad valorem (par. 358, act of 1913). And the same class of merchandise composed in chief value of Angora goat hair, appliquéd in the same manner, returned at the same rate under the same paragraph.

The testimony offered by the importers, and the samples introduced in evidence by them (Exhibits 1, 2, and 3), confirm the report of the appraiser as to the character of the merchandise.

The only issue in the case is whether or not the merchandise is appliquéd. It was so classified by the collector and was assessed for duty at the rate of 60 per cent ad valorem under the provision for appliquéd articles in paragraph 358, tariff act of 1913. The importers claim that it is not appliquéd, and that that portion of it which is composed in chief value of silk is dutiable as silk pile fabrics at the rate of 50 per cent ad valorem under paragraph 314, while that portion which is composed in chief value of the hair of the Angora goat is dutiable at the rate of 45 per cent ad valorem under the provision in paragraph 309 of said act for "pile fabrics * * * made wholly or partly of the hair of the Angora goat."

It appears from the testimony and the exhibits that the merchandise consists of plain pile fabrics in the piece, having imitation ermine tails superimposed thereon at regular intervals to imitate real ermine. The so-called ermine tails are manufactured independently of the

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pile fabric and are laid flat on the surface of the cloth, one end of the tail entering the body of the cloth through a hole made therein and being firmly sewed to the underside of the cloth, while the other end of the tail is held in place by being stitched to the face of the cloth.

In Thorp's case, G. A. 4481 (T. D. 21375), this board, in defining the meaning of the word "appliqué," said:

> The general definition is, "ornamentation with a pattern which has been cut out of another color or stuff applied or transferred to a foundation."

This definition was approved and adopted by the Court of Customs Appeals in United States *v.* Hamburger Levine Co. (5 Ct. Cust. Appls., 217; T. D. 34382) and Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464).

We are of the opinion that the merchandise here in question falls within that definition of the word "appliqué." It consists of finished pile fabrics on which imitation ermine tails have been superimposed, and the fabric, which was plain before the application of the tails, has been ornamented and made to imitate real ermine. We have, then, the union of two independent fabrications, one being applied to the other for ornamentation, and that constitutes appliquéing.

The protests are accordingly overruled.

(T. D. 36421—G. A. 7910.)

Embroidery.

1. EMBROIDERY.

An article consisting of a piece of woven canvas of flax or similar material, upon which as a foundation is worked in wool an ornamental design, is dutiable under the provision in paragraph 358, tariff act of 1913, for "embroideries, * * * and all articles or fabrics embroidered in any manner by hand or machinery, * * * by whatever name known," rather than under the general provision in paragraph 288 for cloths and manufactures wholly or in chief value of wool, not specially provided for.

2. EMBROIDERY AND TAPESTRY DISTINGUISHED.

A distinction is recognized by the authorities between embroidery and tapestry, embroidery being defined as ornamental work done with needle and thread upon a finished fabric or surface, such as canvas, cloth, leather, etc., while tapestry applies to ornamental work which in itself forms a part of the structure of the fabric.

United States General Appraisers, New York, May 19, 1916.

In the matter of protest 782100 of W. & J. Sloane against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The first claim in this protest is that a certain screen marked "A" on the invoice is entitled to free entry

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under paragraph 656, tariff act of 1913, or dutiable under several other paragraphs enumerated in the protest. Claim on this item is overruled, however, as counsel for the importers abandoned it at the hearing, stating that their claim is limited to merchandise which was invoiced as needlework and assessed as embroidered articles. These goods are found in invoice 41714 and are described as "needlework," with further descriptions of "brown ground," "for settee," and "blue ground seats." They were assessed at 60 per cent ad valorem under the provision in paragraph 358, tariff act of 1913, for "embroideries, * * * and all articles or fabrics embroidered in any manner by hand or machinery, * * * by whatever name known." Very many claims are made in the protest, all of which were abandoned at the hearing, as we understand the record, except the claim that the goods are dutiable at 35 per cent ad valorem under paragraph 288, which provides for cloths, knit fabrics, and manufactures wholly or in chief value of wool, not specially provided for; or at 45 per cent ad valorem under paragraph 318 as "woven fabrics, in the piece or otherwise, of which silk is the component material of chief value."

In response to a query at the beginning of the hearing as to what the claim was, counsel for the importers stated as follows:

> It was assessed at 60 per cent under paragraph 358 as embroidered articles, and our protest claims it is dutiable under the provisions for cloths of wool or of silk on the ground that it is a tapestry as distinguished from embroidery.

It will thus be seen that the question involved is whether the merchandise is, as stated by counsel, tapestry or embroidery. If it is tapestry, we understand there is no contention on the part of the Government but that the protest should be sustained. If it is embroidery, then the assessment made by the collector is right, and the protest should be overruled.

A sample of the importation was introduced in evidence. It consists of an ornamental design worked in wool—with perhaps a little silk introduced here and there in the design—upon a piece of woven canvas of flax or some similar material. The canvas or foundation, outside of the area covered by the ornamental design, is filled in with the same woolen thread worked into a plain surface, leaving an edge of canvas extending beyond the needlework, which is turned over upon the back of the article. The work is done by means of a blunt needle carrying a thread. In view of the question raised, it becomes important to determine what, if any, difference there is between tapestry and embroidery. The claim of the importers is that it is called "needlework tapestry."

Wool or silk tapestries are not mentioned in the tariff act, while paragraph 358 specifically provides for "all articles or fabrics embroidered in any manner." The board, in Waentig's case, G. A. 6205 (T. D. 26853), defined embroidery to be "an ornamental design

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produced by needlework upon the surface of a fabric." And the Standard Dictionary says:

Embroidery.—Ornamental work done with the needle on cloth, canvas, leather, etc. * * * The work may be done by hand or with machinery, and threads of cotton, silk, silver, gold, etc., may be used; but embroidery is always work added to the completed fabric by means of a needle.

The New International Encyclopedia defines embroidery as—

The art of producing, by means of needle and thread, ornamental designs upon cloth or other fabric. The term embroidery is always applied to a completed fabric, and the art is thus distinguished from the kindred art of tapestry and lace-making, in which the ornament is part of the structure of the material.

The art of embroidery is very ancient; it is said to be one of the oldest of the decorative arts. In a work entitled "Embroidery and Lace," by Ernest Lefebure, we find the following very concise and illuminating statement with reference to embroidery (p. 8):

Now, whether the stuff being embroidered be held in the hand or the frame, the fact is patent that embroidery is an ornamental needlework done upon a stuff of some sort. Embroidery postulates a material foundation. And the character of this foundation has to be duly appreciated in the course of scheming a design which shall be appropriately worked on to it. Notwithstanding that certain classes of embroidery are worked in such a way as to cover and conceal the ground, as, for instance, when canvas or other plain textiles are used, the margin which may ultimately be placed about such embroideries exacts a harmony between it and them. So that even these embroideries are not exempt from the fulfillment of those general conditions already laid down, neither are they examples of departure from the definition that embroidery is an ornamental needlework wrought upon a texture of some sort.

The New International Encyclopedia, under the head of tapestry, gives this definition:

Tapestry.—A decorative textile fabric formed by a process intermediate between embroidery and true weaving. It differs from embroidery in that the design is not applied to an existing fabric, but, by being woven in and out of warp threads, forms a part of the fabric. It differs from ordinary weaving in that the filling thread, instead of being shot back and forth continuously with a shuttle through a shed formed by the heddles, is worked in and out a few stitches at a time with a thread held in the hand. Tapestry weaving is the simplest and appears to have been the earliest form of weaving.

And to show that a clear distinction has always been observed between embroidery and tapestry, we refer to what is said in the New International Encyclopedia under the titles "Tapestry" and "Bayeux tapestry," the well-known and admitted fact being there stated that, although called tapestry, this production is in fact embroidery, being distinguished as such by the reason that it is a needlework design wrought upon a fabric or plain linen surface.

We can not conceive that any distinction can or should be made between different specimens of embroidery on account of the elaborateness, expense, or beauty of the groundwork employed upon which the ornamental design is worked. The foundation of the

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claim made by the importers is that while this is a cloth material or textile fabric upon which the ornamentation is made in this case, it is so inexpensive and negligible when compared with the whole article that it should be considered as no more than the warp used in the making of tapestry, in which the design is usually wrought upon the warp, or "chain," which runs but one way. We do not think the nature or quality of the foundation, it being conceded that it is a substantial woven fabric, should be considered in determining whether the production is a tapestry or not. We observe that in a great many embroidered articles the groundwork upon which the embroidery is placed is of light, flimsy, and inexpensive material. At the same time embroidery may be wrought upon a finished article of substantial value and beauty and of color harmonizing with the decorated area. If this is not the case, however, the needlework is extended to cover the space required in the embroidered article. Such condition is recognized in the work entitled "Embroidery and Lace," *supra*, where it is said that "embroidery postulates a material foundation. And the character of this foundation has to be duly appreciated in the course of scheming a design which shall be appropriately worked on to it."

We are therefore of the opinion that, according to every recognized ruling and definition to be found in the books, the imported article is embroidery. The protest is overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, MAY 12, 1916.

No. 39723.—Protest 798779 of John G. Hall & Co. (Boston).

HEWN TIMBER.—Timber in lengths of from 5 to 15 feet and from 5 to 14 inches thick, hewn on two sides, classified as railroad ties at 10 per cent ad valorem under paragraph 170, tariff act of 1913, is claimed entitled to free entry as ship timber under paragraph 647.

Opinion by MCCLELLAND, G. A. It was found that the timber in question is not railroad ties. It was held entitled to free entry under paragraph 647, as claimed.

No. 39724.—Protests 786788-57524, etc., of Sears, Roebuck & Co. (Chicago).

CATGUT.—Colored catgut classified at 20 per cent ad valorem under paragraph 366, tariff act of 1913, is claimed free of duty under paragraph 443. Baskets classified at 25 per cent under paragraph 175, compasses classified at 60 per cent under paragraph 356, and dress fasteners classified at 50 per cent under paragraph 167, are claimed dutiable at various lower rates.

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Opinion by McClelland, G. A. The catgut was found to be in lengths of 36 feet, ready to be cut off and used for attaching tail pieces to violins. It was held properly classified under paragraph 366. Fischer *v.* United States (5 Ct. Cust. Appls., 301; T. D. 34477) followed. Protests overruled as to all other items.

No. 39725.—Protest 746908 of Manhattan Importing Co. (New York).

Glass Vials—Blown-Glass Articles.

Sullivan, *General Appraiser:* This protest is against the collector's assessment of duty on certain merchandise as articles in chief value of blown glass at 45 per cent ad valorem under paragraph 84 of the tariff act of 1913, claiming the same dutiable under paragraph 83, which provides for "plain * * * glass * * * vials, * * * filled or unfilled, not otherwise specially provided for" a duty of 30 per cent ad valorem, subject to the following proviso:

Provided, That the terms bottles, vials, * * * as used herein, shall be restricted to such articles when suitable for use as and of the character ordinarily employed as containers for the holding or transportation of merchandise, and not as appliances or implements in chemical or other operations.

Other claims are made, but that is the claim relied on.

We need not consider the claim in the protest for a discount of 5 per cent on duties for the reason that protestants have made no attempt to support the same.

The official sample of the merchandise is a glass vial 2 inches long and seven-sixteenths of an inch in diameter, having a rounded bottom. It is perfectly plain, there being no attempt at ornamentation. This vial is closed by a small brass cap having a thin piece of cork fitted inside. On the outside of the top of the cap are stamped the words "Cachou mint."

Protestants' witness testified "they are imported to fill up with a certain breath perfumer;" that they are sold to the confectionery trade; that when the breath perfumers are placed therein they are merely containers for the merchandise; that the contents are sold with the vial; and that he knew of no use for them in connection with any chemical operation or any other sort of manufacturing process.

On cross-examination the examiner who passed the merchandise in question, and who was called as a witness by the Government, testified that the glass in the official sample was neither ornamented, painted, or colored, cut or engraved, silvered, gilded, etched, sand blasted, frosted, or printed in any manner, nor ground; that the legend on the top would indicate it was used for some kind of mint; and that he did not consider it would be used as an appliance or implement in chemical or other operations. The following is an extract from his cross-examination:

Q. Would you in the same way consider the official sample susceptible for use as and of the character ordinarily employed as containers for the holding or transportation of merchandise?—A. It could be used for that.

Q. Is it generally suitable for that use?—A. I see no reason why it could not be.

Q. (By General Appraiser Brown.) You think the legend on the top indicates, or not, such use?—A. In my opinion it would indicate it.

He also testified that in classifying bottles he considered the proviso before putting them in paragraph 83, and that he would distinguish the merchandise placed in paragraph 84 from that in paragraph 83 by reason of the fact that one is used for holding or transportation purposes and the other not.

We think the vials in question are "of the character ordinarily employed as containers for the holding or transportation of merchandise," viz, Cachou mint, and as such are properly dutiable under paragraph 83.

The protestants' contention being meritorious, to this extent we sustain their protest, and reverse the collector's decision.

No. 39726.—Protest 799130 of Geo. Borgfeldt & Co. (New York).

Compasses—Toys.—Small, cheap mathematical compasses about 2¼ inches long, retailing for 1 cent each, classified as toys at 35 per cent ad valorem under paragraph

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342, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39086 the compasses in question were held dutiable under paragraph 167.

No. 39727.—Protest 798301 of Schieffelin & Co. (New York).

RADIOSCHMITOSCOPE—MICROSCOPES.—A so-called radioschmitoscope used for examining radio emanations, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, is claimed dutiable as miscroscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. The instrument in question was found to be of the same character as those passed upon in Abstract 38941, and held dutiable as microscopes under paragraph 94. Protest sustained.

No. 39728.—Protest 787218 of American Thermo-Ware Co. (New York).

COMPASSES—JEWELRY.—Compasses composed in chief value of metal, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel, the compasses in question were held dutiable under paragraph 167. G. A. 7824 (T. D. 35949) followed.

No. 39729.—Protest 769861 of Strobel & Wilkin Co. (New York).

CANDLES FOR BIRTHDAY CAKES.—Merchandise described on the invoice as birthday candles and candles, classified at 35 per cent ad valorem under paragraph 342, tariff act of 1913, is claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the candles in question were held dutiable under paragraph 385. Abstract 39025 followed.

No. 39730.—Protest 782757 of M. H. Rogers (New York).

SILK PRAYER RUGS.

BROWN, *General Appraiser*. The merchandise was returned by the appraiser as "silk rugs, not Oriental rugs, but similar to them in use, appearance, and material." The collector classified the goods under paragraph 300, act of 1913, at 50 per cent, providing for "carpets of every description, woven whole for rooms, and Oriental, Berlin, Aubusson, Axminster, and similar rugs." Claim is made under paragraph 318 as manufactures of silk at 45 per cent.

The importer testified that the articles were not rugs; that they were not made on rug looms, but on a plush loom; that they are not used for floor coverings, but are used as table covers, couch covers, or for wall decoration; that they are made in prayer designs and are used in the Oriental countries as prayer rugs. They are sold as silk prayer rugs.

The examiner testified that Oriental silk rugs have designs similar to these prayer rugs; that Oriental rugs are usually made by hand, while these prayer rugs are machine made, but both are used for similar purposes, that is, for couch or table covers and wall decorations; that these prayer rugs are fitted for use as floor coverings, and that they are similar to silk rugs with which he is familiar; and that the name "prayer rug" comes from the design.

An examination of the sample discloses an article which appears to be very like an Oriental rug. It has the same appearance. Its texture and design would indicate that it would be used just as an Oriental rug is used. It manifestly belongs to the same high-grade class to which Oriental rugs belong or at least closely approximates it.

We therefore hold that it is similar to Oriental rugs, sustain the classification, and overrule the protest.

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BEFORE BOARD 2, MAY 12, 1916.

No. 39731.—Protest 770948 of Oxford University Press, American Branch (New York).

DICTIONARIES.—Small dictionaries entitled "The Concise Oxford Dictionary," classified as books not specially provided for at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry under the provision for textbooks in paragraph 426.

Opinion by FISCHER, G. A. The evidence showed that a large number of these dictionaries are sold to schools and colleges, but it was not established that they are known either commonly or commercially as textbooks. They were held properly classified under paragraph 329.

No. 39732.—Protests 761272, etc., of Robert Muller & Co. et al. (New York).

SNAP FASTENERS, CELLULOID CHIEF VALUE.—Snap fasteners of brass and celluloid, classified as articles of collodion at 40 per cent ad valorem under paragraph 25, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167, or as snap fasteners made wholly or in chief value of iron or steel at 15 per cent under paragraph 151.

Opinion by FISCHER, G. A. The snap fasteners in question being in chief value of celluloid were held not dutiable under paragraph 167 or 151. The classification under paragraph 25 was affirmed.

No. 39733.—Protest 797482 of Robert Muller & Co. (New York).

SNAP FASTENERS.—Parts of snap fasteners composed of brass, not plated, classified at 20 per cent ad valorem under paragraph 167, tariff act of 1913, and finished snap fasteners composed in chief value of vegetable ivory, celluloid, or brass plated with silver, classified under paragraphs 369, 25, and 167, respectively, are claimed dutiable as snap fasteners made wholly or in chief value of iron or steel at 15 per cent under paragraph 151.

Opinion by FISCHER, G. A. Protest unsupported; overruled.

No. 39734.—Protests 776631, etc., of Geo. Borgfeldt & Co. (Baltimore).

NEEDLES IN PAPER FOLDERS.—Needles of various sizes in paper folders, classified at 20 per cent ad valorem under paragraph 135, tariff act of 1913, are claimed entitled to free entry as "needles, hand sewing and darning," under paragraph 555.

Opinion by FISCHER, G. A. On the authority of United States *v.* Strauss (6 Ct. Cust. Appls., 498; T. D. 36125), affirming Abstract 37902, the merchandise in question was held free of duty under paragraph 555, as claimed.

No. 39735.—Protest 789135-6429 of Geo. Borgfeldt & Co. (New Orleans).

NEEDLES IN PAPER FOLDERS—BODKINS.—Needles of various sizes in paper folders with one metal bodkin to each folder, classified at 20 per cent ad valorem under paragraph 135, tariff act of 1913, are claimed free of duty under paragraph 555.

Opinion by FISCHER, G. A. On the authority of Abstract 37902, affirmed in United States *v.* Strauss (6 Ct. Cust. Appls., 498; T. D. 36125), the merchandise was held free of duty under paragraph 555, with the exception of the metal bodkins, which were held dutiable under paragraph 135.

No. 39736.—Protest 789136-6438 of Geo. Borgfeldt & Co. (New Orleans).

NEEDLES IN PAPER FOLDERS—BODKINS.—Needles and bodkins in paper folders, classified as nonenumerated manufactured articles at 20 per cent ad valorem under paragraph 480, tariff act of 1909, are claimed entitled to free entry under paragraph 633.

Opinion by FISCHER, G. A. The metal bodkins were held dutiable at 25 per cent ad valorem under paragraph 164. The balance of the merchandise was held free of duty under paragraph 633, as claimed. Abstract 37902, affirmed in United States *v.* Strauss (6 Ct. Cust. Appls., 498; T. D. 36125), followed.

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No. 39737.—Protests 751408-53335, etc., of Lyon & Healy (Chicago).

STRINGS FOR MUSICAL INSTRUMENTS.—These protests are against the classification of strings for musical instruments as manufactures of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913.

Opinion by HOWELL, G. A. On the authority of Fischer *v.* United States (6 Ct. Cust. Appls., 443; T. D. 35982) the strings in question were held properly classified under paragraph 318.

No. 39738.—Protests 756839, etc., of J. Friedenberg & Co. et al. (New York).

BEADED TRIMMINGS.—Trimmings and ornaments classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be in chief value of beads or spangles, dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. Trimmings and ornaments found to be in chief value of beads were held dutiable under paragraph 333, as claimed. Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed. Protests sustained in part.

BEFORE BOARD 3, MAY 12, 1916.

No. 39739.—Protest 791599-6439 of P. Giardina (New Orleans).

GAUGE OF OLIVE OIL.

WAITE, *General Appraiser:* The tariff act of October 3, 1913, under which this importation of 50 tins of olive oil was made, provides in paragraph 45 as follows:

> 45. * * * Olive oil, not specially provided for in this section, 20 cents per gallon; olive oil, in bottles, jars, kegs, tins, or other packages having a capacity of less than 5 standard gallons each, 30 cents per gallon; * * *.

It is claimed by the importers that this olive oil should be assessed under the first provision. The collector has assessed it under the second provision as being in containers of a capacity of 5 gallons or more. The oil was in tins. The inquiry, then, must be directed as to the capacity of the tins.

We are unable to say from the record whether the Government actually measured the tins in question, or any one of them. The return of the weigher shows that he found 1,862 pounds to be the net weight; and we find upon the return of the weigher, in red ink, the figures "240.258 gallons." From these figures it would appear that the weigher had used as the weight of a gallon of this oil 7.7 pounds, and the assessment of duty was made upon that basis, which leads to the conclusion, apparently arrived at by the collector, that the quantity of oil would indicate a capacity of less than 5 gallons to the tin. The reports of the appraiser and collector show that the assessment was made on the theory that the tins were full. We are unable to say from the record whether they were full or not except from the above statement in the return.

The importers do not show that they measured any single gallon of the oil to ascertain its weight, but have adopted arbitrarily the weight of a gallon of oil as being 7.562 pounds. Dividing that into the total weight which they claim to have found would show more than 5 gallons to the tin, from which it is argued that the capacity of the tin must have been greater than 5 gallons.

From the above statement it will be seen that the case is left in a very unsatisfactory condition. There is really no proof from which we can determine the actual capacity of the tins. The language of the statute, it will be observed, is, "having a capacity of less than five standard gallons each." We know of no standard gallon of the United States except the one used in the various tables of weights, which contains 231 cubic inches.

What it was necessary for the importers to have done to make their case is very clearly pointed out in United States *v.* Moos & Co. (5 Ct. Cust. Appls., 322; T. D. 34528). In that case the Government apparently measured and subsequently weighed a

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a standard gallon of the oil. Upon the question of adopting an arbitrary weight for a gallon of olive oil, the court in that case said:

In view of the fact that all olive oils are not of the same specific gravity and that for the same volume some brands weigh more and some less than others, it is apparent that a fixed basis of 7.56 pounds can not be made applicable to all olive oils, and that if it is used for the purpose of determining quantities of olive oils having a specific gravity which is not the equivalent of that weight an inaccurate result is sure to follow.

The law under which this case arose differs somewhat from the one under which the decision above referred to was made. In that case the rate of duty depended upon the quantity. In this case the rate of duty depends upon the capacity of the container. The Secretary of the Treasury has assumed to declare how many pounds of olive oil shall constitute a gallon of certain different manufactures and brands (T. D. 35746). The brand here imported, however, does not seem to be included in that table. The right of the importers to recover must depend upon whether they have substantiated their claim. This we do not think they have done. Whether the collector's action be right or wrong, and on the presumption that it is right, the protest must be overruled. It is therefore hereby overruled.

No. 39740.—Protests 722539–4587, etc., of F. G. Favaloro (New Orleans).

VALIDITY OF REAPPRAISEMENT.

HAY, *General Appraiser:* Protest 722540 challenges the validity of a certain reappraisement of tomato paste made by a general appraiser at New Orleans in May, 1913, and afterwards affirmed by a board of general appraisers in June of the same year. The protest was once before this board and overruled for want of testimony, this board not having before it, as it was not offered in evidence, the reappraisement proceeding that was challenged. Thereafter, a rehearing was granted and the case heard at New Orleans on the 17th of November, 1915. The record as then made up and now before the board for decision shows that the importer was represented by counsel at the original reappraisement proceeding and the appeal to reappraisement abandoned by counsel in the presence of his client, the importer, and that, by error, the general appraiser marked the reappraisement "submitted," rather than "abandoned." The record shows that the abandonment was made for the reason that the merchandise was appraised by the local appraiser at the value at which it was entered. This entered and appraised value was advanced, apparently without any evidence before him upon which to base that advance and without samples of the merchandise. The advance thus made by the general appraiser was sustained, in that his action was affirmed by the board of three general appraisers without apparently having any evidence to sustain that advance, the importer or protestant not being present or represented by counsel and the board not having samples before it.

The importer claims, among other things, that the case having been abandoned by the importer the general appraiser erred in reappraising the merchandise. We question the soundness of this contention as the case once being properly before the general appraiser, that is, he once having acquired jurisdiction, we are inclined to the view that he had power under the statute which requires him to, "by all reasonable ways and means," find the market value of the merchandise.

This case must, however, be determined upon other questions, for the protest is broad enough to reach every question which goes to the validity of the action of the general appraiser and that of the Board of General Appraisers. The record, we think, clearly shows that there were not samples of all the merchandise before the general appraiser or the Board of General Appraisers. By the law of October 3, 1913, such a defect, if defect it was, was entirely cured by Congress in the enactment into positive law what this board had theretofore held to be the rational rule. This reappraisement proceeding, however, both before the general appraiser and the Board of General Appraisers, was in the year 1913, but preceded the enactment of the tariff

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law of October 3, 1913. This statute was not retroactive; hence, so far as this case is concerned, that provision of law can no more than reflect the congressional view. Prior to that statute the necessity for samples before a general appraiser in the reappraisement of merchandise, or before a board of general appraisers, had been very frequently considered by this tribunal as well as by the United States Circuit Court, the United States Circuit Court of Appeals, and the United States Court of Customs Appeals. The exact status of the law was left somewhat in confusion, hence the necessity for the legislation. This board's views upon that subject were very fully expressed in Curnen & Steiner's case, G. A. 5720 (T. D. 25423), and numerous other cases thereafter considered.

In the case at bar, in addition to there being no samples before either the general appraiser or the Board of General Appraisers, the complete record of the reappraisement proceeding, which is before us, and all the testimony which was offered and received by the general appraiser hearing the case, leaves, we think, the quite definite impression on the mind that the advance was made by the general appraiser and the Board of General Appraisers either arbitrarily, or, what is more probable, through error, there being nothing before the general appraiser upon which to base the advance in question, nor did the Board of General Appraisers have anything before them upon which to base that advance. The record also discloses that the representative of the importer offered to come to New York, where the hearing was, if necessary, and was advised by the board that the same would not be necessary. This, we think, brings the case within the rule laid down by this board in the Haviland case, G. A. 6655 (T. D. 28382), which was affirmed by the United States Circuit Court for the Southern District of New York (167 Fed., 414; T. D. 29523) and by the United States Circuit Court of Appeals (177 Fed., 175; T. D. 30296), the case being carefully considered by both tribunals, and a writ of error refused by the Supreme Court (216 U. S., 618; T. D. 30370). We therefore reach the conclusion that the protest in this case should be sustained and the reappraisement proceeding set aside as invalid. The last valid appraisement, therefore, was that made by the appraiser of the port of New Orleans, and upon the value thus fixed the collector is directed to reliquidate the entry.

Protest 722539 was filed with the collector of the port of New Orleans on June 21, 1913, and the entry was not liquidated until July 22, 1913; hence the protest was not filed in accordance with the provisions of subsection 14, section 28, of the tariff act of 1909. Protest 722539 is therefore dismissed.

No. 39741.—Protest 797346 of Geo. S. Bush & Co. (Seattle).

SHORTAGE—TEA CONTAINERS.—It is claimed here that duty was assessed upon the basis of 1,040 boxes of tea, whereas but 90 were imported.

Opinion by HAY, G. A. The protest was submitted without testimony as to the number of boxes received; overruled.

No. 39742.—Protest 787437 of K. L. Wedgewood (New York).

IMITATION CAMEOS—EARTHENWARE.—Imitation cameos made of earthenware or stoneware, classified as decorated earthenware under paragraph 79, tariff act of 1913, are claimed dutiable as imitation precious stones under paragraph 357.

HAY, *General Appraiser:* * * * In F. Wm. Gertzen Co.'s case, Abstract 28797 (T. D. 32618), this board held that paragraph 449 of the act of 1909, which is similar to paragraph 357 of the present act, made "no provision for imitation cameos: it provides for various precious stones and for cameos; it also provides for imitation precious stones. A cameo, however, is not a precious stone, but is an engraving in relief on stone or shell." In that case it held china imitation cameos dutiable as decorated china under paragraph 93, act of 1909. This case was followed in W. H. Stiner & Son's case, Abstract 33352 (T. D. 33695), but the cameos there in question, being made of paste or glass, were held dutiable under paragraph 109 of the act of 1909.

Testimony was introduced in an attempt to establish commercial designation, in order to bring the articles under the paragraph, because commercially known as such.

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This testimony, we think, failed of its purpose. See Robt. B. Way's case, G. A. 7327 (T. D. 32271). Following the previous decisions of this board on like or similar articles, the protest is overruled.

No. 39743.—Protests 787257, etc., of Keystone Watch Case Co. (New York).

VALIDITY OF LIQUIDATION.—It is claimed here that the collector erred in not liquidating the entry at the value found upon reappraisement and that the entry was made under duress.

Opinion by HAY, G. A. Duress was not established by the testimony. The claim as to the validity of liquidation was overruled on the authority of G. A. 7764 (T. D. 35629) and G. A. 7893 (T. D. 36347).

No. 39744.—Protests 784743, etc., of D. C. Andrews & Co. et al. (New York).

TAGUA-NUT SLABS.—Slabs of tagua nuts, the nuts having been sawed after the removal of the shell, classified as nonenumerated manufactured articles at 15 per cent ad valorem under paragraph 385, tariff act of 1913, are claimed entitled to free entry as tagua nuts under paragraph 620.

Opinion by HAY, G. A. There being nothing in the record to distinguish the merchandise from that passed upon in G. A. 7622 (T. D. 34862) the protests were overruled.

BEFORE BOARD 1, MAY 15, 1916.

No. 39745.—Protests 769654, etc., of Happel & McAvoy (New York).

METAL POCKET FLASKS.—Metal pocket flasks classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

SULLIVAN, *General Appraiser:* * * * It was shown that the flasks are intended for carrying liquids on the person at certain times, and are composed of Britannia ware, nickel plated. The witness testified that they are not carried in the pocket as a lead pencil is carried, but only at certain times, and that most of the time they are carried in valises.

We have previously held collapsible drinking cups composed of base metal, which were arranged in sections to fold into a small space, fitted for carrying in a hand satchel or the pocket, dutiable as a manufacture of metal rather than under paragraph 356 because not *eo nomine* mentioned therein, nor a like article to any of those mentioned in that paragraph. Heinrich, Herrmann & Weiss's protest 767195 (Abstract 38700).

In passing on metal pedometers and compasses, *In re* protests 778698, etc., of Sussfeld et al., G. A. 7824 (T. D. 35949), we held that the specific use of those instruments for a specific purpose by a specific class put them outside of paragraph 356.

In construing the third clause of paragraph 356 the Court of Customs Appeals in Gallagher *v.* United States (6 Ct. Cust. Appls., 105; T. D. 35343) said:

> The controlling question in this provision, outside of the question of value and material, seems to be whether the articles in question *are designed to be* worn on apparel or *carried on or about* or attached to *the person in the same manner as are the enumerated articles* and like articles *when in their customary use.* If the assessed articles do not resemble the enumerated ones in that particular, then they would not fall within the present provision, whatever might be their resemblance to the exemplar articles or some of them in any other particulars. On the other hand, if the assessed articles are similar to the prescribed exemplars in respect to the manner in which they are worn or customarily carried upon the person, then the resemblance is sufficient to satisfy the terms of the provision. The rule of *ejusdem generis* is thus limited by the paragraph to the single controlling resemblance just defined.
>
> It may be observed that the articles which are enumerated in the disputed provision are numerous and in some respects diverse. Some of them are wholly ornamental in character, for example, "vanity cases" and "millinery ornaments;" some are wholly utilitarian, for example, "cigar cutters" and "match boxes;" some may be both ornamental and useful, for example, "chains" and "cuff buttons." In one

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particular, however, they are all alike, and that is that in their customary use they are all carried upon the person of the user; not for warmth or protection like clothing, but rather as incidental articles of mere personal comfort, convenience, or adornment. [Italics ours.]

In our opinion these flasks are not "like articles" to those enumerated in the paragraph. For that reason we hold them dutiable as manufactures of metal at 20 per cent ad valorem under paragraph 167, as claimed in the protests.

The protests are sustained, and the decision of the collector reversed in each case.

No. 39746.—Protest 795850 of Schieffelin & Co. (New York).

RADIOSCHMITOSCOPES — MICROSCOPES — OPTICAL INSTRUMENTS. — Radioschmitoscopes consisting of microscopes for examining emanations of radium from the clay pipe, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstract 38941 the radioschmitoscopes in question were held dutiable as microscopes under paragraph 94, as claimed.

No. 39747.—Protest 767653 of Florent Bauweas (St. Louis).

RUBBER BALLOONS—TOYS.—Small rubber balloons used for advertising purposes, classified as toys and parts of toys under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of india rubber or gutta percha at 10 per cent under paragraph 368.

Opinion by SULLIVAN, G. A. The balloons in question were found to be suitable only for the amusement of children. They were held dutiable as parts of toys, as classified by the collector. Abstract 39517 cited.

No. 39748.—Protest 762840 of Shrenk & Co. (New York).

POLISHED CYLINDER GLASS.—Merchandise consisting of two plates of polished cylinder glass glued together, having a black rim or finish around the edges composed of a gluelike material, classified as manufactures of glass at 30 per cent ad valorem under paragraph 95, tariff act of 1913, is claimed dutiable as polished cylinder glass under paragraphs 86 and 90.

Opinion by SULLIVAN, G. A. From the evidence it was found that the sheets of glass in question are used for making wind shields for automobiles or for jewelry cases, which use does not make them manufactures of glass. They were held dutiable as cylinder glass, polished, under paragraphs 86 and 90, as claimed.

No. 39749.—Protests 703749, etc., of American Bead Co. (New York).

IMITATION PRECIOUS STONES—BEADS.—Merchandise classified as beads at 35 per cent ad valorem under paragraph 421, tariff act of 1909, or paragraph 333, tariff act of 1913, is claimed dutiable as imitation precious stones for use in the manufacture of jewelry at 20 per cent under paragraph 449, tariff act of 1909, or paragraph 357, tariff act of 1913.

Opinion by SULLIVAN, G. A. On the authority of Abstract 35438 (T. D. 34416), Abstract 37001 (T. D. 34984), and United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509; T. D. 33166), certain of the items were held dutiable as imitation precious stones, as claimed. As to certain other items the testimony was not sufficient to establish that the predominating use of the articles is in the manufacture of jewelry. Protests overruled as to these items. Abstract 35260 (T. D. 34321) followed.

No. 39750.—Protests 776784–56255, etc., of Bernard, Judae & Co. (Chicago).

BEADED ARTICLES—JEWELRY.—Colored glass beads on strings with knots tied between the beads and loose ends, and beads permanently strung, classified at 50 per cent ad valorem under paragraph 333, tariff act of 1913, and long chains without clasps, composed of colored glass beads, classified at 60 per cent under paragraph 356, are claimed dutiable at various lower rates.

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Opinion by SULLIVAN, G. A. The beads on strings were held properly classified at 50 per cent under paragraph 333. American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259) followed. The long chains without clasps, being admittedly jewelry, were held properly classified under paragraph 356.

BEFORE BOARD 2, MAY 15, 1916.

No. 39751.—Protest 787909 of Edwin Horrax (New York), and protest 771556 of Jose Lemo & Hermano (San Juan).

SNAP FASTENERS.—Snap fasteners of metal, plated with silver, classified at 50 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable under the specific provision for snap fasteners in paragraph 151, or as buttons at 40 per cent under paragraph 339.

Opinions by FISCHER, G. A. The snap fasteners in question being silver plated were held properly classified under paragraph 167.

No. 39752.—Protest 799662–58845 of I. Lanski & Son Scrap Iron Co. (Chicago).

IRON AND STEEL PIPE—SCRAP STEEL.—The appraiser reports that the merchandise consists of unused butt-welded iron and steel pipe which comes from the mill defective for high pressure purposes. It is cut into lengths and used as guard rails, fence posts, rollers, building columns or supports, and lawn fences. It was classified at 20 per cent ad valorem under paragraph 127, tariff act of 1913, and is claimed entitled to free entry as scrap steel fit only for remanufacture, under paragraph 518.

Opinion by FISCHER, G. A. The importers have failed to establish that the pipe in question is fit only for remanufacture. It was held properly classified under paragraph 167.

No. 39753.—Protest 797542 of C. A. Sykes (New York).

FORCEPS—SURGICAL INSTRUMENTS.—Surgical forceps or other surgical instruments with two lever handles working on a pivot, with cutting, gripping, or pinching jaws, classified under the provision for nippers and pliers in paragraph 166, tariff act of 1913, at 30 per cent ad valorem, are claimed dutiable under paragraph 167 at 20 per cent.

Opinion by FISCHER, G. A. On the authority of Koch *v.* United States (6 Ct. Cust. Appls., 534; T. D. 36148) the forceps in question were held dutiable under paragraph 167, as claimed.

No. 39754.—Protest 792588 of Linen Thread Co. (Boston).

NET-MAKING MACHINES.—Fish-net making machines classified at 25 per cent ad valorem under paragraph 165, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the authority of G. A. 7816 (T. D. 35898) the fish-net making machines in question were held dutiable under paragraph 167, as claimed.

No. 39755.—Protests 763837, etc., of American Express Co. et al. (New York).

BEET-KNIFE SHARPENERS—FRAISES.—Fraises consisting of circular steel files employed to sharpen beet knives, classified at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed entitled to free entry as parts of machinery for use in the manufacture of sugar under paragraph 391.

Opinion by FISCHER, G. A. The fraises in question were held free of duty under paragraph 391, as claimed. G. A. 7687 (T. D. 35141), affirmed in United States *v.* American Express Co. (6 Ct. Cust. Appls., 494; T. D. 36124) followed.

No. 39756.—Protest 580794 of Kronfeld, Saunders & Co. (New York).

POST CARDS, LITHOGRAPHICALLY PRINTED.—Post cards classified as printed matter at 25 per cent ad valorem under paragraph 416, tariff act of 1909, are claimed dutiable as lithographic prints under paragraph 412.

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Opinion by FISCHER, G. A. The cards in question were found to be lithographically printed in part. They were held dutiable at the appropriate rates under paragraph 412, as claimed.

No. 39757.—Protest 794839 of Continental Paper Co. (New York).

CARD BOARD—WALL BOARD.—So-called Calno board, known in the trade as wall board, used for sheathing the interior of dwellings and the like, as a substitute for lath and plaster, classified as cardboard at 25 per cent ad valorem under paragraph 328, tariff act of 1913, is claimed dutiable as common paper-box board at 5 per cent under paragraph 320.

Opinion by FISCHER, G. A. Protest unsupported; overruled.

No. 39758.—Protests 791146, etc., of Adams Express Co. (New York).

"EVERYMAN'S LIBRARY."—Works of literature known as "Everyman's Library," classified as books at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed to be textbooks, free of duty under paragraph 426.

Opinion by FISCHER, G. A. The books in question were held properly classified under paragraph 329. G. A. 7692 (T. D. 35170), affirmed in Dutton *v.* United States (6 Ct. Cust. Appls., 460; T. D. 35987) followed.

No. 39759.—Protest 788647 of R. Koehler (New York).

WOVEN FABRICS, WOOL CHIEF VALUE.—Woven fabrics of silk and wool classified as silk chief value at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed to be composed in chief value of wool, dutiable at 35 per cent under paragraph 290.

Opinion by HOWELL, G. A. It was found that wool is the component material of chief value in the fabrics in question, and they were held dutiable under paragraph 290, as claimed.

No. 39760.—Protests 764476, etc., of Kronfeld, Saunders & Co. (New York).

SILK HAND BAGS, APPLIQUÉD.—Silk bags ornamented with beads, classified as appliquéd at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be not appliquéd, dutiable as manufactures of silk at 45 per cent under paragraph 318.

Opinion by HOWELL, G. A. The bags in question were found not appliquéd and held dutiable under paragraph 318, as claimed.

No. 39761.—Protests 750256, etc., of Snow's United States Sample Express Co. (New York).

WEARING APPAREL IN PART OF NETTING.—Wearing apparel classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable under paragraph 256 or 317.

Opinion by HOWELL, G. A. Wearing apparel in chief value of cotton was held dutiable at 30 per cent under paragraph 256. Articles composed in chief value of silk were held dutiable at 50 per cent under paragraph 317. G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), followed. Protests sustained in part.

No. 39762.—Protest 748623-50170 of Marshall Field & Co. (Chicago).

WOOL WEARING APPAREL IN PART OF BRAID.—Merchandise classified as wearing apparel, appliquéd, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as wool wearing apparel at 35 per cent under paragraph 291.

Opinion by HOWELL, G. A. The wearing apparel in question was found to be composed in chief value of wool and in part of braid. It was held dutiable as wool wearing apparel under paragraph 291. G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), followed.

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BEFORE BOARD 3, MAY 15, 1916.

No. 39763.—Protest 791629 of Al. G. Pritchard & Co. (New York).

LACE CUSHIONS—ANTIQUES.—It is claimed here that certain lace cushion covers are entitled to free entry as antiques under paragraph 656, tariff act of 1913.

Opinion by WAITE, G. A. The case was submitted upon correspondence. This was held not to be evidence upon which to base a conclusion as to the questions raised by the protest. Protest overruled.

No. 39764.—Protest 736570 of Compania Harinera del Norte (Eagle Pass).

VALUE OF CURRENCY.—Wheat bran imported from Mexico, invoiced at 2 cents and appraised at 5 cents per kilo, appears to have been liquidated on the basis of $0.498 as the value of the Mexican dollar. It is claimed that this value had depreciated and that the Mexican dollar was worth but $0.35 at the time of importation.

Opinion by WAITE, G. A. The importers not having invoked section 25 of the tariff act of 1894, or section 2903 of the Revised Statutes, protest overruled. G. A. 7679 (T. D. 35122) noted.

No. 39765.—Protest 762090 of Butler Bros. (Minneapolis).

COMMISSIONS—DURESS.—It is claimed that certain items of commission or discount were not part of the dutiable value and were added under duress.

Opinion by WAITE, G. A. Duress was not proved. Protest overruled.

No. 39766.—Protests 325910, etc., of Lippincott, Johnson & Co. (Philadelphia).

COMMISSIONS.—It is claimed that a charge of commissions appearing on the invoices is a nondutiable item.

Opinion by WAITE, G. A. There being nothing in these cases to show that the liquidation was incorrect or that duty was assessed upon any more than the correct market value of the goods, protests overruled.

No. 39767.—Protest 790513 of F. B. Vandegrift & Co. (Philadelphia).

TEA COVERINGS.—Tin tea containers of less than 5 pounds capacity each, packed in large wooden cases without intermediate coverings, are claimed entitled to free entry under paragraph 627.

Opinion by HAY, G. A. The containers in question were held free of duty under paragraph 627, as claimed. Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) followed.

BEFORE BOARD 1, MAY 17, 1916.

No. 39768.—Protests 781537, etc., of Louis Stern & Co. (Providence).

MESH—PARTS OF MESH BAGS.—The question here is whether a baglike form of metal mesh is dutiable under the provision for mesh bags and parts thereof at 60 per cent ad valorem under paragraph 356, tariff act of 1913, or as mesh suitable for use in the manufacture of mesh bags at only 50 per cent under the same paragraph.

SULLIVAN, *General Appraiser:* * * * The official sample consists of the lower part of a mesh bag. It is in baglike form, and is composed of German silver. The testimony shows it is identical with the merchandise in question so far as the form is concerned, but that the actual importation was composed of 10-carat gold.

Is this article a part of a mesh bag, or metal mesh finished suitable for use in the manufacture of mesh bags?

At the hearing four witnesses were called by the protestants, and one by the Government. The testimony of protestants' witness, Stern, shows that the merchandise has to be cut on each side so that the bag opens conveniently; then the frame is attached and the finishing touches added to it, when it becomes a complete bag.

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The following are extracts from his testimony:

Q. You distinguish between mesh in this form and the sheet?—A. The distinction is, one is gotten up in this form, and another is gotten up in another form.

Q. What is this form?—A. That is a sort of bag shape, ready to make it into a bag, in the form and shape of a bag; *ready to be made up into a bag.* * * *

Q. By the addition of a certain frame you can finish up a bag?—A. You can make a bag out of it. * * *

Q. Do you know of any one case where mesh has been brought in that form illustrated in the illustrative exhibit, and has actually been used for anything but a bag?—A. I never have seen it. [Italics ours.]

Witness Rosenheim testified that this is a sack.

From the testimony of protestants' witness Cobb:

Q. Would you call this material mesh?—A. Yes.

Q. What form would you call that in?—A. A partially made article. * * *

Q. Would you say that was material for the making of an article?—A. Yes.

Q. Have you got any name that you know that by?—A. As a sack; a trade name. * * *

Q. Mesh in the form of Exhibit 1 you stated is already soldered; and in order to make it a complete bag would require no further soldering?—A. I should think not.

Q. Whereas in the case of bags made from the sheet or strip, soldering is an essential feature of the manufacturing?—A. Yes.

Q. Now, how many parts are there to mesh bags?—A. There is the sack, the frame, the various parts the frame is composed of, and the chain.

Q. The sack, the frame, and the chain are the three principal parts, are they not?—A. Yes.

Q. So that within your statement an article like Exhibit 1 would be a part of a complete mash bag, would it?—A. Yes.

The following is quoted from the testimony of Government witness Whiting:

Q. What is the pouch bag?—A. The pouch bag is a bag similar to what you have there, with a draw string.

Q. The pouch bag is a bag similar to that?—A. Similar to this bag, with a chain around the outside so as to draw it together like that.

Q. When you say "this bag" you are referring to the sample marked Exhibit 1, are you not?—A. Yes.

Q. How many parts are there to that bag?—A. There is the bag such as you have there.

Q. The bag such as represented by the exhibit?—A. Yes; and the chain to draw it together; the chain does not fasten.

Q. So that as far as that particular bag is concerned, you would consider this exhibit an essential part?—A. I do, yes sir, a principal part. * * *

Q. Are you familiar with a bag that is made with a frame and chain? I mean how many parts are there to such bags?—A. There is the bag, the frame, and the chain—the various parts that go to make up the frame.

Q. Bearing in mind that kind of bag, will you inspect Exhibit 1, and *state if you consider that a part of such bags?*—A. *I do.* * * *

Q. *Are these ever ordered as meshes?*—A. *No, sir; not from us.*

Q. *How are these ordered?*—A. *They are ordered as so many mesh bags.* [Italics ours.]

The last witness also testified that the bag part of a completed mesh bag with chain and frame is about 75 per cent of the total value, and that the mesh in the form of sheets would cost approximately 62 to 63 per cent of the cost of the made-up article.

It seems to us this is part of a metal mesh bag. Of course, it is also mesh or material of metal suitable for use in the manufacture of mesh bags. In fact, there is testimony showing that it is known as mesh, and is also known as materials for use in making mesh bags and other articles. (Minutes, pp. 2, 4, 6, 9, 12, 26, 36, 37, 38, and 44.) We think, however, that Congress intended by the words "mesh and other materials of metal, * * * finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles (mesh bags)" to mean the raw material before it is cut or manufactured into the form adapting it to any particular kind or size of bag, and these articles, the witness Stern testified, are manufactured to fit a particular size frame (p. 12). A piece of cloth might be material suitable for use in the manufacture of a coat, but it would not be a part of a coat until it had been

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cut into shape fitting it to become a part of that garment. So with the merchandise in question; it might be mesh or material for use in the manufacture of mesh bags if it had been imported "separate or in strips or sheets" which had to be further manufactured to make them parts of mesh bags; but this article is made for a particular size bag, and merely requires a slight cutting and the attachment of the frame and other parts to become a complete article. In making this statement we have in mind the provision in the last clause of paragraph 356 that the mesh or material mentioned therein may be *finished or partly finished,* as we can conceive of sheet mesh that might require further manufacture in the way of polishing or plating, for instance, and therefore it need not necessarily follow that by reason of these articles being bag shaped they are within the clause mentioned as finished materials. It is certain that mesh in sheet form, whether finished or partly finished, if suitable for use in the manufacture of any of the articles or like articles named in paragraph 356, is within the last clause of that paragraph and not within the clause providing for, among other things, parts of mesh bags, finished or partly finished. This article, being advanced beyond the stage of finished or partly finished raw mesh or materials, and being shown to be parts of mesh bags, is not within the last clause as mesh, which refers to material, but is dutiable under the preceding clause in paragraph 356 as parts of mesh bags at 60 per cent ad valorem.

In January, 1913, more than eight months prior to the enactment of the present tariff act, the board held in *In re* protests 536048, etc., of S. Cottle Co., G. A. 7426 (T. D. 33144), that silver mesh in strips from 6 to 9 feet long and from 9 to 10 inches wide, suitable for use in the manufacture of mesh bags and for other purposes as well, was neither mesh bags nor parts thereof, but was material out of which mesh bags may be manufactured, and was dutiable at 45 per cent ad valorem as manufactures in part of metal under paragraph 199 of the act of 1909.

In the tariff act of 1909 there was no provision for mesh. In the present tariff act there is. It is presumed, therefore, that Congress had knowledge of that decision (G. A. 7426, *supra*) at the time of passing the act of 1913, and in the light of such knowledge, desiring to specifically provide for mesh, or to place a higher rate of duty thereon if made from base metal, than that provided for metal articles in paragraph 167 of the present tariff, enacted the provision for mesh in the last clause of paragraph 356. This, of course, indicates that the mesh covered thereby is mesh in strips or sheets, finished or partly finished.

The merchandise in dispute is a partially finished mesh bag. The testimony clearly establishes it as such. The statute refers to mesh bags specifically. Then it declares: "All the foregoing and parts thereof, finished or partly finished," are dutiable at 60 per cent ad valorem. This portion of the act fits closely the merchandise under consideration. The closing portion of the paragraph refers to mesh material, finished or partly finished, a different thing from a part of a mesh bag, finished or partly finished. We can not come to any other conclusion.

The protests are overruled, and the decision of the collector affirmed in each case.

No. 39769.—Protests 781530, etc., of French Import Co. et al. (Providence).

CHAINS IN LENGTHS.

SULLIVAN, *General Appraiser:* The merchandise in this case consists of unfinished chain in long lengths assessed with duty under the last clause of paragraph 356, which reads:

> Stampings, galleries, mesh and other materials of metal, whether or not set with glass or paste, finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles (chain) in this paragraph, 50 per centum ad valorem.

The protests claim it dutiable under paragraph 167 "as articles or wares, wholly or in chief value of brass or other metal, partly or wholly manufactured, at 20 per cent

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ad valorem"; or as "articles manufactured wholly or in chief value of any wire or wires" at 15 per cent ad valorem under paragraph 114, tariff act of 1913.

As shown by the official samples, the chain is in meter lengths, imported on reels, and is made of brass. The testimony shows it is known as foxtail chain, snake chain, rope chain, and tombac chain, and that they are all worth less than 30 cents a yard; also that a reel contains approximately 328 feet of chain. It is also shown that rope chain is always made of wire: that the chain in question never comes in sheets or in strips; that it could be used in the manufacture of jewelry; that it is actually sold to jewelers and manufacturing jewelers; that it sometimes comes in lengths done up in papers like a clothesline; that the chain is made of wire, except possibly the snake chain, as to which the witness was not positive. One witness testified that he knew of no article that used one of these lengths of chain *in toto*. Another witness stated it is *adapted* for use in the manufacture of jewelry, which is equivalent to "*suitable* for use in the manufacture of jewelry." Another witness stated that all the chains represented by the samples are used in the manufacture of jewelry.

In our judgment this testimony establishes as a fact that the principal use of this chain is in the manufacture of jewelry, and, therefore, it falls under the provisions of the last clause of paragraph 356.

Chain may come under several clauses of paragraph 356. If it is jewelry, worth over 20 cents per dozen pieces, it is dutiable at 60 per cent ad valorem under the first clause; if "rope, curb, cable, and fancy patterns of chain not exceeding one-half inch in diameter, width, or thickness, valued *above* 30 cents per yard," it is dutiable at the same rate under the second clause; if "articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person," it is *eo nomine* provided for in the third clause if composed of metal, "whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones or imitation pearls," at 60 per cent ad valorem. It is evident that the merchandise in question is not dutiable under any of these provisions.

Then comes the clause quoted at the beginning of this opinion, under which the chain was classified. Is it more aptly classified under this provision than as claimed in the protests? It seems to us this chain is "materials of metal, * * * separate, * * * suitable for use in the manufacture" of the chains mentioned in the paragraph, or of jewelry. Some point was made in the testimony of the fact that it did not come in strips or sheets, but the paragraph also provides for separate materials, and the testimony shows that each class of chain comes separately in reels or done up in papers like clothesline. However, we think it is immaterial how this chain was imported; if it is "materials of metal, finished or partly finished," suitable for use in the jewelry or chains mentioned in the paragraph, it is dutiable at 50 per cent ad valorem under the last clause of paragraph 356. The collector having so classified it, it is presumed to be such materials, unless the presumption is overcome by a preponderance of evidence. This is not the case here. On the contrary there is proof that it could be and is used in the manufacture of jewelry. See *In re* protest 729992 of Attleboro Manufacturing Co. (Abstract 39496), April 4, 1916; *In re* protests 736995, etc., of same (Abstract 38944), December 13, 1915.

The protests are overruled and the collector's decision affirmed in each case.

No. 39770.—Protest 736150 of Guthman, Solomons & Co. (New York).

BEADED ARTICLES—JEWELRY.—Merchandise invoiced as silk moire beaded long chains, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed dutiable as articles composed of beads at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. The sample is composed of six strips of black silk moire about three-eighths of 1 inch wide connected by an ornament composed of two sections of steel beads with an imitation pearl bead in the center. In the middle is

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attached a blackened metal snaphook evidently intended to suspend a fan, watch, or other small article. It was held dutiable as a beaded article under paragraph 333. American Bead Co. *v.* United States (7 Ct. Cust. Appls. —; T. D. 36259) followed.

No. 39771.—Protest 763994 of American Express Co. (New York).

ENLARGING CAMERAS—PHOTOGRAPHIC CAMERAS—OPTICAL INSTRUMENTS.—Enlarging cameras classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as photographic cameras at 15 per cent under paragraph 380.

Opinion by SULLIVAN, G. A. It was found that the cameras in question are used to enlarge photographs, but that pictures can be taken with them. They were held to be provided for *eo nomine* in paragraph 380, as claimed. G. A. 7697 (T. D. 35220), affirmed in United States *v.* Bliss (6 Ct. Cust. Appls., 433; T. D. 35980), followed.

No. 39772.—Protest 776439 of Happel & McAvoy (New York).

GOLF SCORERS.—Golf scorers in chief value of metal, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable under paragraph 167.

Opinion by SULLIVAN, G. A. The golf scorer in question is of the shape and size of a watch. By pressing on the stem it records the points made by a player in the game of golf. On the authority of Abstract 39074, holding compteurs dutiable at 20 per cent under paragraph 167, the protest was sustained.

No. 39773.—Protests 778689, etc., and 798372 of Favor, Ruhl & Co. et al. (New York).

VARNISHES.—Varnishes classified at 20 per cent ad valorem under paragraph 17, tariff act of 1913, are claimed dutiable at 10 per cent under paragraph 58.

Opinions by BROWN, G. A. On the authority of Abstract 39354 the varnishes in question were held dutiable under paragraph 58, as claimed.

No. 39774.—Protest 792056 of J. A. Chambers (New York).

SILVER POLISH.—Liquid silver polish classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable as a preparation for polishing at 15 per cent under paragraph 11.

Opinion by BROWN, G. A. The liquid silver polish in question was held dutiable under paragraph 11, as claimed. Abstract 39526 and G. A. 7896 (T. D. 36361) cited.

No. 39775.—Protests 761510, etc., of F. B. Vandegrift & Co. (New York).

BLACKING.—Blacking classified at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable under the provision for blacking of all kinds at 15 per cent in paragraph 11.

Opinion by BROWN, G. A. On the authority of Abstract 37931 the blacking in question was held dutiable under paragraph 11, as claimed.

No. 39776.—Protest 538026 of Larini & Co. (New York).

FISH IN TINS.—Tunny fish classified at 40 per cent ad valorem under paragraph 252, tariff act of 1909, is claimed dutiable at 30 per cent under paragraph 270.

Opinion by BROWN, G. A. The merchandise was found to consist of tunny fish packed in tins with a few capers, olives, and a little vinegar. It was held dutiable under paragraph 270, as claimed. Abstract 36276 (T. D. 34704) followed.

BEFORE BOARD 2, MAY 17, 1916.

No. 39777.—Protest 788996 of Rice-Stix Dry Goods Co. (St. Louis).

COTTON BRAIDS—TAPES.—Merchandise returned by the appraiser as cotton braids at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as cotton tapes.

Opinion by HOWELL, G. A. The merchandise in question is of various colors, about one-half inch in width, used for ornamenting or decorating ladies' underwear.

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The evidence was held insufficient to prove commercial designation. United States *v.* Oberle (1 Ct. Cust. Appls., 527; T. D. 31545) cited. Protest overruled.

No. 39778.—Protest 774447 of J. J. Gavin & Co. (New York).

BEADED CAPES.—Infants' capes classified as silk wearing apparel, appliquéd, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed not appliquéd, dutiable at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. It was found that the capes in question are ornamented with beads. They were held not appliquéd. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed. Protest sustained claiming them dutiable as silk wearing apparel under paragraph 317.

No. 39779.—Protests 774093, etc., of Stern & Stern (New York).

BEADED TRIMMINGS.—Trimmings, ornaments, and articles of wearing apparel composed of a foundation of netting, or chiffon ornamented with beads or spangles, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) the trimmings, ornaments, and articles of wearing apparel composed in chief value of beads or spangles and made in part of netting or chiffon were held dutiable at 50 per cent under paragraph 333, as claimed. Protests sustained in part.

No. 39780.—Protests 769682, etc., of John Whytlaw Co. (New York).

DRESS GOODS OF SILK OR WOOL.—Dress goods classified as silk chief value at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed to be composed in chief value of wool, dutiable at 35 per cent under paragraph 290.

Opinion by HOWELL, G. A. Goods found to be wool chief value were held dutiable under paragraph 290. Protests overruled as to those items found to be in chief value of silk.

No. 39781.—Protest 759779 of J. J. Gavin & Co. (New York).

WEARING APPAREL, APPLIQUÉD—LACE SCARFS.—Children's cotton dresses returned by the appraiser as appliquéd wearing apparel, and women's cotton lace scarfs, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 256.

Opinion by HOWELL, G. A. On the authority of United States *v.* Hamburger (5 Ct. Cust. Appls., 217; T. D. 34382) the children's dresses were held dutiable as cotton wearing apparel under paragraph 256, as claimed. Following G. A. 7775 (T. D. 35715) the board held the lace scarfs dutiable as cotton wearing apparel (par. 256).

No. 39782.—Protests 761182, etc., of E. Newgass & Co. (New York).

WEARING APPAREL, EMBROIDERED.—Wearing apparel with pockets ornamented with a crow's-foot, and articles of wearing apparel made in part of braids, ornaments, or trimmings, classified as embroidered at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable according to the component material of chief value under paragraphs 358, 291, and 317, respectively.

Opinion by HOWELL, G. A. The so-called "crow's-foot" was found to be intended not only to give strength and firmness to the corners of the pocket but to ornament it as well. This ornamentation was held to be embroidery and the wearing apparel was held properly classified under paragraph 358. The articles of wearing apparel in part of braids, ornaments, or trimmings, in chief value of wool, were held dutiable at 35 per cent under paragraph 291, and those in chief value of silk were held dutiable at 50 per cent under paragraph 317. United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), followed.

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No. 39783.—Protest 759050, of Rusch & Co. (New York).

WOVEN FABRICS, COTTON CHIEF VALUE.—Woven fabrics classified as silk chief value at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed to be composed chiefly of cotton, dutiable under paragraph 254.

Opinion by HOWELL, G. A. The woven fabrics in question were found to be cotton chief value and held dutiable under paragraph 254, as claimed.

No. 39784.—Protests 756910, etc., of Kronfeld, Saunders & Co. (New York).

WEARING APPAREL IN PART OF BRAID, ETC.—Articles of wearing apparel, some plain and others made in part of braid, trimming, or netting, or ornamented with lace, embroidery, or scalloping, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable according to the component material of chief value under paragraphs 256, 317, and 291, respectively.

Opinion by HOWELL, G. A. The wearing apparel found to be in chief value of cotton was held dutiable at 30 per cent under paragraph 256, the silk at 50 per cent under paragraph 317, and the wool at 35 per cent under paragraph 291. Protests overruled as to the articles made in part of lace, embroidery, or scalloping. G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), followed.

No. 39785.—Protests 736992, etc., of B. Altman & Co. (New York).

BEADED ORNAMENTS AND TRIMMINGS.—Trimmings and ornaments classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as articles composed in chief value of beads or spangles at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. G. A. 7641 (T. D. 34927) followed as to protest fee. Certain items were found to be in chief value of beads or spangles and were held dutiable under paragraph 333, as claimed. Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

No. 39786.—Protest 678920 of William H. Stiner & Son (New York).

WEARING APPAREL, EMBROIDERED, IN PART OF LEVER LACE.—The question here is whether merchandise invoiced as lace waists, classified at 70 per cent ad valorem under paragraph 350, tariff act of 1909, is made in part of Lever lace ornamented with embroidery.

Opinion by HOWELL, G. A. On the authority of Altman *v.* United States (5 Ct. Cust. Appls., 170; T. D. 34251) the waists in question were held properly classified under paragraph 350.

BEFORE BOARD 3, MAY 17, 1916.

No. 39787.—Protest 764639 of Wm. L. Munro (Pittsburgh).

ARTISTIC ANTIQUITIES—SHEFFIELD PLATE.—Goods invoiced as "antique Sheffield plate chased border and center tea tray" and "antique Sheffield plated espergne with 4 arms and 5 glasses," classified under paragraph 167, tariff act of 1913, as silver-plated ware, are claimed free of duty as artistic antiquities under paragraph 656.

Opinion by WAITE, G. A. From an inspection of the articles and a consideration of the testimony they were found to have been manufactured more than 100 years before importation and entitled to free entry under paragraph 656.

BEFORE BOARD 1, MAY 19, 1916.

No. 39788.—Protests 789527, etc., of Fritzsche Bros. (New York).

GUM STYRAX.

MCCLELLAND, *General Appraiser:* The appraiser returned the merchandise involved as "natural aromatic substance used in the manufacture of but not marketable as perfumes or cosmetics." Duty was assessed at the rate of 20 per cent ad valorem

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under paragraph 49 of the tariff act of 1913. Free entry is claimed under paragraph 477, and alternatively that duty should have been assessed at either 10 or 15 per cent ad valorem under paragraphs 27 or 385 and 386 of said act.

Two witnesses testified on behalf of protestants, and their testimony shows that the merchandise is obtained by bruising the bark of a tree. The gum which exudes from the bark is scraped off and placed in bags. It is subsequently heated and strained through wire screens for the purpose of removing sticks, dirt, and other impurities. The merchandise is used by manufacturers of soap and aromatic substances, the cinnamic esters contained in the gum forming one of the raw materials used in making such aromatic substances. In its imported condition the merchandise is not suitable for use in the manufacture of perfumes. Before being so used it must first be subjected to processes of distillation, or made into alcoholic tinctures. The witnesses agree in their statements that the merchandise is gum styrax and their testimony is uncontroverted.

The importations in question appear to be similar to that which was the subject of G. A. 7694 (T. D. 35172) wherein it was held to be dutiable at the rate of 10 per cent ad valorem under the provisions of paragraph 9 of the tariff act of 1913. The protests claim that duty should have been assessed at the rate of 10 per cent ad valorem but do not name paragraph 9. The board and the courts have held that such an omission does not invalidate a protest, and we therefore hold that the protests are sufficiently specific to be in compliance with the provisions of subsection N of section 3 of the tariff act of 1913.

The claims that duty should have been assessed at the rate of 10 per cent ad valorem are sustained, the protests being overruled in all other respects.

The decisions of the collector are modified accordingly.

No. 39789.—Protest 799926 of Corl, Knott & Co. (Detroit).

STRAW-HAT TRIMMINGS.—Merchandise invoiced as trimmings for straw hats, classified as artificial flowers at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable as colored straw braids at 20 per cent under paragraph 335.

Opinion by MCCLELLAND, G. A. The merchandise was found to be in a large part of straw in its natural form, except that it is dyed or stained, and therefore not one of the articles or materials enumerated in paragraph 347. It was held dutiable as a manufacture of straw under paragraph 368. Protest overruled, that claim not having been made.

No. 39790.—Protest 798247-58676 of Butler Bros. (Chicago).

STUFFED CHICKS AND DUCKLINGS.—Stuffed chicks and ducklings classified at 40 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed entitled to free entry under paragraph 416.

Opinion by MCCLELLAND, G. A. The chicks and ducklings were found to be similar to those passed upon in Abstract 39573. They were held properly classified under paragraph 347.

No. 39791.—Protest 796114-58396 of James H. Furman Co. (Chicago).

MATCHES.—Matches having a stained, dyed, or colored stick or stem, classified at 25 per cent ad valorem under paragraph 345, tariff act of 1913, are claimed dutiable under the same paragraph at 3 cents per gross.

Opinion by MCCLELLAND, G. A. The classification appearing to be in harmony with G. A. 7669 (T. D. 35097) the protest was overruled.

No. 39792.—Protest 784122 of V. C. Squier (Detroit).

CATGUT.—The question in this case is whether certain catgut is dutiable at 20 per cent ad valorem under paragraph 366, tariff act of 1913, or entitled to free entry under paragraph 443.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 39577 the catgut in question was held to be unmanufactured, free of duty under paragraph 443.

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No. 39793.—Protest 798540 of W. H. Allison Co. (Detroit).

SOAP.—Toilet soap classified as perfumed at 30 per cent ad valorem is claimed to be unperfumed, dutiable at 10 per cent under the provisions of paragraph 66, tariff act of 1913.

Opinion by McCLELLAND, G. A. Protest unsupported; overruled.

No. 39794.—Protest 799970 of Kwong Man Yuen (Portland, Oreg.).

TOILET PREPARATION—SOAP—SOAP POWDER.—Merchandise invoiced as washing stuff, classified as a toilet preparation at 60 per cent ad valorem under paragraph 48, tariff act of 1913, is claimed dutiable as soaps or soap powder at 5 per cent under paragraph 66.

Opinion by McCLELLAND, G. A. Protest unsupported; overruled.

No. 39795.—Protest 800346 of T. W. Thayer & Co. (Rochester).

BIRCH LUMBER.—The collector reports that the merchandise in question is birch lumber sawed and planed. It was classified as cabinet wood at 10 per cent ad valorem under paragraph 169, tariff act of 1913, and is claimed free of duty under paragraph 647.

Opinion by McCLELLAND, G. A. On the authority of Abstract 37365 the birch lumber in question was held entitled to free entry under paragraph 647. G. A. 7546 (T. D. 34305) noted.

No. 39796.—Protest 800388 of J. W. Hampton, jr., & Co. (New York).

LEATHER.—Leather classified at 30 per cent ad valorem under paragraph 360, tariff act of 1913, is claimed entitled to free entry under paragraph 530, or dutiable under paragraph 359 or paragraph 176.

Opinion by McClelland, G. A. Protest unsupported; overruled.

BEFORE BOARD 2, MAY 19, 1916.

No. 39797.—Protest 788207 of Thomas Meadows & Co. (New York).

SLIPPERS.—Slippers composed in chief value of wool, silk, or cotton, classified as wool wearing apparel, appliquéd, or as wearing apparel in part of ornaments, under paragraph 358, tariff act of 1913, at 60 per cent ad valorem, are claimed dutiable at 35 per cent under paragraph 291, or 30 per cent under paragraph 256.

Opinion by HOWELL, G. A. Upon stipulation of counsel the merchandise classified as appliquéd was held dutiable as wool wearing apparel under paragraph 291. United States *v.* Hamburger (5 Ct. Cust. Appls., 217; T. D. 34382) followed. On the authority of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), such slippers as are composed in chief value of wool were held dutiable as wool wearing apparel under paragraph 291, those in chief value of cotton under paragraph 256, and those in chief value of silk under paragraph 317. Protest sustained in part.

No. 39798.—Protests 741272, etc., of R. F. Downing & Co. et al. (New York).

STRINGS FOR MUSICAL INSTRUMENTS.—These protests relate to strings for musical instruments, classified as manufactures of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913.

Opinion by HOWELL, G. A. On the authority of G. A. 7722 (T. D. 35382), affirmed in Fischer *v.* United States (6 Ct. Cust. Appls., 443; T. D. 35982), the strings in question were held properly classified under paragraph 318.

BEFORE BOARD 3, MAY 19, 1916.

No. 39799.—Protest 792063 of A. J. Coccaro (New York).

CHERRIES IN BRINE—FRUIT PREPARED.

WAITE, *General Appraiser:* The goods imported in this case consist of 10 casks of what is described as "cherries in brine." The appraiser's report is in the following language:

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The merchandise consists of cherries prepared, packed in an aqueous solution which is not brine. It was returned for duty as edible fruit prepared at 1 cent per pound under paragraph 217, tariff act of 1913.

The importer makes the following claim in his protest:

Said merchandise is covered by and is free of duty under paragraph 488. If not free, it is covered by and is dutiable under the first clause of paragraph 217 (as cherries) at only 10 cents per bushel of 50 pounds.

The claim under paragraph 217 we think is untenable and overrule it without further comment.

Paragraph 488, of the law of 1913, provides for—

Fruits or berries, green, ripe, or dried, and fruits in brine, not specially provided for in this section.

Analyses of two samples of the liquid in which these cherries were imported have been introduced in evidence. In one sample there was found 0.557 of 1 per cent of salt; and in the other 0.422 of 1 per cent, the average being 0.489 of 1 per cent, or a little less than one-half of 1 per cent of salt. Previous rulings of the department and the board and the courts have seemed to acquiesce in the conclusion that 0.60 of 1 per cent of salt would constitute brine. Under such rulings we should have to hold that the liquid in this case was not brine. Free entry as "fruits in brine" has been granted, however, to cherries of this kind which were imported in a liquid with sufficient saline component to preserve the fruit until manufactured into maraschino and glacé cherries (the commodities into which these imported cherries are converted), notwithstanding the saline solution was not sufficient to be generally termed a brine. In such cases, however, it has been shown that the necessary preservation was caused by the saline solution. In the case at bar it appears that the preservation has been caused very largely by the sulphur treatment to which the cherries have been subjected.

We are therefore of the opinion that the importer has not shown that this commodity is free of duty under paragraph 488. Note Abstract 36645 (T. D. 34810), affirmed in Delapenha & Co. *v.* United States (6 Ct. Cust. Appls., 18; T. D. 35252). The protest is overruled.

No. 39800.—Protests 791846, etc., of Geo. Borgfeldt & Co. (New York).

ALABASTER LAMPS—SCULPTURES—ENTIRETIES.—The merchandise in question is alabaster lamps consisting of two portions, a standard which was classified at 15 per cent ad valorem under paragraph 376, tariff act of 1913, and a globe classified as a manufacture of alabaster at 45 per cent under paragraph 98. It is claimed that the standard and globe constitute an entirety, dutiable under paragraph 376.

Opinion by WAITE, G. A. The protests were sustained as to such lamps as were separated for duty purposes, the board holding them dutiable as entireties under paragraph 376. Abstract 38174 noted.

No. 39801.—Protest 789998 of Thomas & Pierson (New York).

SILVER TEAPOT—ARTISTIC ANTIQUITIES.—A silver teapot classified under paragraph 167, tariff act of 1913, is claimed entitled to free entry as an artistic antiquity under paragraph 656.

Opinion by WAITE, G. A. From the evidence it was found that the teapot in question was not produced more than 100 years prior to the date of importation as required by statute. Protest overruled.

No. 39802.—Protests 787822, etc., of B. Frankfeld & Co. (New York).

PITUITARY GLANDS.

HAY, *General Appraiser:* The merchandise in this case consists of pituitary glands in a crude state, assessed for duty under paragraph 385, tariff act of 1913, as a nonenumerated unmanufactured article. It is claimed to be free of duty under paragraph 419 or 545, and, in addition to these two paragraphs, protest 798048 claims paragraph 477.

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Paragraph 419 provides for bladders and all integuments, tendons, and intestines of animals and fish sounds, crude, dried, or salted for preservation only, and unmanufactured. The testimony shows that the commodity in question is none of the specific articles named in this paragraph, and, as there is no general provision in that paragraph, only the articles named therein are covered thereby. See B. Frankfeld & Co.'s case, Abstract 38893.

Paragraph 545 provides for—

Meats: Fresh beef, veal, mutton, lamb, and pork; bacon and hams; meats of all kinds, prepared or preserved, not specially provided for in this section.

Then follows a proviso stating that none of the foregoing meats shall be admitted into the United States unless fit for human consumption and under certain rules, etc. It is shown by the testimony and the appraiser's report that these glands are taken from the brainpan of the beef, and, so far as the witnesses could state, were imported only for the medicinal qualities of a certain extract obtained therefrom.

Paragraph 477 provides for "drugs, such as"; then follows a list of articles which it was intended by Congress to include within the provision "drugs." None of the articles mentioned in this list would seem to cover the glands here in question. In P. E. Anderson & Co.'s case, G. A. 7773 (T. D. 35704), this board held that the doctrine of *expressio unius est exclusio alterius* would operate to exclude drugs not mentioned in the list.

The protests are overruled.

No. 39803.—Protests 782178, etc., of Baltimore & Ohio Railroad Co. et al. (Baltimore, etc.); protests 732990, etc., of G. F. Matthews & Co. et al.; protests 763385, etc., of Consolidated Tea Co. et al.; protests 787115, etc., of B. Fischer & Co. et al. (New York); and protests 779182, etc., of Geo. S. Bush & Co. et al. (Seattle).

TEA COVERINGS.—Certain coverings of tea are claimed entitled to free entry under paragraph 627, tariff act of 1913.

Opinions by HAY, G. A. Upon stipulation of counsel, such coverings of tea as are made of materials other than glass, bamboo, or fiber were held entitled to free entry under paragraph 627. Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) followed. Protests sustained in part.

REHEARING DENIED.

MAY 17, 1916.

No. 39804.—FANCY PAPER BOXES.—Protest 787261 of Park & Tilford. Abstract 39582.

Opinion by BOARD 2: The Government's application for a rehearing in this case is denied for the following reasons:

There was not at the hearing, nor is there now, any dispute whatever concerning the precise character of the merchandise under consideration, nor even regarding the component material of chief value therein, although the latter fact, in our judgment, is wholly immaterial in determining the tariff classification of said articles, and for that reason was not considered by us in the decision of the case.

These undisputed facts formed the basis of our ruling:

(1) The articles were admitted to be boxes: (2) they were composed of paper and cardboard; (3) the exterior was covered with surface-coated paper; (4) the interior was lined with silk; (5) silk was the component of chief value.

The provision of law which is plainly applicable to this class of merchandise is found in the first part of the following provision contained in paragraph 324 of the act of 1913:

* * * *And all boxes of paper or papier-mâché or wood covered with any of the foregoing papers* or covered or lined with cotton or other vegetable fiber, 35 per centum ad valorem.

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It will therefore be seen that the boxes in question possess the specific statutory requirements necessary to bring them within the meaning of the first half of said provision. A mere examination of the articles is sufficient to show that they are boxes, and the uncontradicted proof leaves no room for questioning the fact that they are made of paper and that they are covered with surface-coated paper. The statute exacts no further requirement. It is clearly intended to cover these particular boxes. It is too plain that the first portion of said provision contains absolutely no restriction as to lining for the boxes, whereas the second half of the provision specifically provides for such boxes as may be composed of paper, papier-mâché, or wood, and which are covered or lined with cotton or other vegetable fiber. Under the first part of the provision, therefore, it is wholly immaterial whether or not the boxes are lined or unlined. The boxes here in question happen to have a silk lining. But it is not clear to us how the lining or its composition can become a factor in determining the tariff status of articles provided for in the first half of said provision, in view of the clear and positive language thereof, which leaves no room for speculation concerning the precise class of boxes intended to be covered thereby.

Moreover, the contention of the Government would establish as the test of classification the nature, quality, and value of the lining, rather than the character of the completed box, notwithstanding the latter is the specific article mentioned in the provision. In other words, instead of the silk lining being considered merely as an incidental component in the physical construction and formation of the box, the Government's attitude is, that, because it so happens that the silk lining is the most valuable single component in the article, the fact should control in arriving at the tariff status of the completed article; that the character of the completed article is merely a secondary consideration; that the correct classification of the article should read, "a manufacture in chief value of silk composed in part of a paper box." That this is the contention of the Government is made clear by the following excerpt from its brief filed with the papers in the case:

* * * Accordingly we have not here merely paper boxes; we have a completely manufactured article which is composed in part of a paper box, but which is composed in chief value of something else, i. e., a silk fabric or lining.

We can find no warrant or reason in the terms of the provision for considering the question of value. Had Congress intended that chief value should control the classification of these boxes, it would have used language similar to that found in the provision in the same paragraph immediately preceding the one here under consideration. Such preceding provision specifically covers "articles composed wholly or in chief value of any of the foregoing papers." No such qualifying language appears in the provision now under consideration.

In the case of United States *v.* Lord & Taylor (4 Ct. Cust. Appls., 322; T. D. 33521), certain straw hats trimmed with silk were classified by the collector as wearing apparel composed in chief value of silk at the rate of 60 per cent ad valorem under paragraph 402 of the act of 1909. They were claimed to be properly dutiable under the provision in paragraph 422 of said act for—

* * * Hats * * * composed wholly or in chief value of straw, * * * whether wholly or partly manufactured, but not trimmed, thirty-five per centum ad valorem; if trimmed, fifty per centum ad valorem. * * *

The board sustained the claim of the importers, and the court, in affirming the board, held that the hats were the subject of the duty imposed and not the trimming on the hats.

Thus, in the case at bar, the paper boxes covered with surface coated paper are the subject of the provision, and not any lining which may happen to be on the inside of the boxes.

Likewise, in the case of United States *v.* Woodruff (175 Fed., 776; T. D. 30211), the United States Circuit Court of Appeals, Second Circuit, held that furniture with

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wooden frames was dutiable as "furniture of wood" under paragraph 208 of the act of 1897, though the silk in its upholstery might have been the component of chief value.

As authority for its position herein, the Government cites the case of United States *v.* Muhlens & Kropff (4 Ct. Cust, Appls., 496; T. D. 33917), wherein the court held that plain bottles covered on the outside with willow or wicker strands closely woven around the bottles and tightly drawn, so that none of the glass bottles was visible except about one-half inch at the top, were not properly classifiable under a provision in paragraph 97 of the act of 1909 for "plain green * * * bottles."

That case, however, is easily distinguished from the present. There the provision was for plain green bottles, and not for plain green bottles covered with willow or wicker, whereas here the provision specifically provides for boxes of paper, papier-mâché or wood covered with surface-coated paper, which language accurately describes the merchandise here under consideration.

(T. D. 36422.)

Leather cue tips.

BRUNSWICK-BALKE-COLLENDER CO. *v.* UNITED STATES (No. 1630).

1. CONSTRUCTION—PARAGRAPH 360, TARIFF ACT OF 1913.

   Paragraph 360, tariff act of 1913, should not, on account of the fact that it levies a higher rate of duty on the articles it names if "permanently fitted" with certain other articles, be construed to mean that an article, to be dutiable under it, must be susceptible of being so fitted.

2. MANUFACTURE OF LEATHER, WHAT IS.

   Leather cue tips are a manufacture of leather, citing Tilge & Co. *v.* United States (3 Ct. Cust. Appls., 97; T. D. 32360) and Devoy *v.* United States (3 Ct. Cust. Appls., 444; T. D. 33034).

United States Court of Customs Appeals, May 12, 1916.

APPLICATION for rehearing, decision rendered March 9, 1916 (7 Ct. Cust. Appls., 1; T. D. 36253).

[Denied.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This case was decided March 9, 1916, and is reported in T. D. 36253. For the statement of facts, reference is made to the original opinion as reported.

A motion for rehearing has been entered, based upon two grounds, and inasmuch as one of these grounds was not discussed at length in the opinion, although a denial of the present contention was involved in our holding that the paragraph of the act of 1909, corresponding to paragraph 360 of the present act, had received an interpretation which is inconsistent with the contention here made, we think, in view of the insistence upon the argument put forth, some reply should be made thereto.

The main opinion discusses paragraph 360 of the act of 1913, which reads as follows:

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Bags, baskets, belts, satchels, cardcases, pocketbooks, jewel boxes, portfolios, and other boxes and cases, made wholly of or in chief value of leather or parchment not jewelry, and manufactures of leather or parchment, or of which leather or parchment is the component material of chief value, not specially provided for in this section, 30 per centum ad valorem; any of the foregoing permanently fitted and furnished with traveling bottle, drinking, dining, luncheon, and similar sets, 35 per centum ad valorem.

The contention made is that, in view of the second provision of paragraph 360, which reads, "any of the foregoing permanently fitted and furnished with traveling, bottle, drinking, dining, luncheon, and similar sets, 35 per cent ad valorem," the "foregoing articles" must have been susceptible of being fitted or furnished with the sets mentioned, and that any article not susceptible of being fitted or furnished would not be included within the paragraph, and it is stated—

All the named classes of goods—eight in number—are made both with and without fittings. The whole subject matter of the paragraph is manufactures susceptible of being fitted; * * *.

The case of Dingelstedt *et al. v.* United States (91 Fed., 112) is relied upon in support of the contention.

It is obvious that as a requisite basis upon which to rest its contention the statement in the brief that "all the named classes of goods—eight in number—are made both with and without fittings" should be found to be correct in fact. We think it is equally obvious from a reading of the statute that counsel for the importers is under a misapprehension. The named articles are "bags, baskets, belts, satchels, card cases, pocketbooks, jewel boxes, portfolios, and other boxes and cases, made wholly of or in chief value of leather or parchment." It is difficult to conceive of a belt being fitted and furnished with a traveling set, a bottle set, a dining set, a luncheon set, or any other similar set. It is equally difficult to understand how card cases or pocketbooks or jewel boxes can be so fitted and furnished. The mere statement of the proposition is a sufficient answer to the contention. Therefore the case of Dingelstedt *v.* United States was deemed to have no application and the words "manufactures of leather or parchment, or of which leather or parchment is the component material of chief value," were given their ordinary signification, just as the words "manufactures of leather" had been given such construction in the cases cited in the main opinion. Tilge & Co. *v.* United States (3 Ct. Cust. Appls., 97; T. D. 32360) and Devoy *v.* United States (3 Ct. Cust. Appls., 444; T. D. 33034).

The second point made in the application for rehearing is that the cases of Tilge *v.* United States and Devoy *v.* United States are not authority for the conclusion reached, for the reason that the merchandise here involved is not similar in its adaptability as a finished article as compared with the hat sweats passed upon in the first of the

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two cases or to the book backs considered in the second case. It is said:

> In the case of hat sweats, the ends of the strip of leather are merely sewed together to be inserted into the hat, while the book back is in effect a bag or case in which to carry a book. In neither case is there any cutting and fitting of the article after it is imported. It goes into use as the identical article which was imported.

This is not, as we think, a correct analysis of the cases referred to in our main opinion. In the case of Tilge *v.* United States it was stated in the quotation embodied in our main opinion:

> Considered as "hat sweats" they are finished articles and, *barring the cutting to size*, they are ready without further manipulation to be put immediately to the use for which they were made.

The Devoy case was rested upon the fact that the book backs in question, some of which were lettered and some were not, "were of such shape and finish and were so processed as to plainly indicate that they were designed for use as book backs and that they were commercially fit for no other purpose." What was true of the book backs in that case is true of the cue tips in the present case.

We cite the following cases as presenting some analogous questions: Fenton *v.* United States (1 Ct. Cust. Appls., 529; T. D. 31546); Boye Needle Co. *v.* United States (5 Ct. Cust. Appls., 43; T. D. 34009).

The application for rehearing is *denied*.

(T. D. 36423.)

Metal-coated paper.

KUPFER BROS. CO. *v.* UNITED STATES (No. 1675).

1. CONSTRUCTION—PARAGRAPH 332, TARIFF ACT OF 1913.

   The words "plain, decorated, embossed, or printed, except by lithographic process," relate back to all that precedes them in paragraph 332, tariff act of 1913.

2. CONSTRUCTION—CHANGE OF LANGUAGE SIGNIFIES CHANGE OF MEANING.

   In enacting paragraph 332, tariff act of 1913, Congress struck from the corresponding paragraph (415), tariff act of 1909, the terms "bands" and "strips." This evidences a congressional intention to exclude bands and strips from the operation of the paragraph and restrict it to the shapes or designs named and such as are *ejusdem generis* in the strictest sense.

3. "GOLD BORDERS," HOW DUTIABLE.

   Merchandise invoiced as "gold borders," consisting of metal-coated paper cut into strips each about 2½ feet long and a quarter of an inch wide, embossed with a small ornamental design and with the letters "P" and "T," left attached to a very narrow border at each end for convenience in handling, used for fancy wrapping around candy boxes or similar packages, is dutiable as a *manufacture* of metal-coated paper, and not as metal-coated paper itself, under paragraph 324, tariff act of 1913. It is not dutiable as paper or a manufacture thereof under paragraph 332.

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4. MANUFACTURE OF PAPER, WHAT IS.

Strips of paper made up so that nothing remains to be done to them before using but to detach their ends are so far advanced in condition that they are no longer simply paper, but have become a manufacture of it.

United States Court of Customs Appeals, May 12, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7852 (T. D. 36161).

[Affirmed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney, of counsel), for the United States.

[Oral argument April 12, 1916, by Mr. Brown and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise in question was invoiced as gold borders. It consists of metal-coated paper cut into strips each about 2½ feet long and one-quarter of an inch wide, embossed with a small ornamental design and with the letters "P" and "T." The strips which appear in the representative sample are 12 in number, and by the process of manufacture remain attached to a very narrow border at each end, evidently maintained for convenience in the use of the strips, which when used are torn off and devoted to their intended purpose. The only testimony in the case tends to show that these strips are used either for decorating or for fancy wrapping around candy boxes or similar packages. The latter use, from an examination of the sample, would appear to be the exclusive use to which they are adapted.

Duty was levied upon these articles at the rate of 35 per cent ad valorem under the provisions of paragraph 324 of the act of 1913, which, so far as material for the questions presented, reads as follows:

Papers wholly or partly covered with metal leaf, * * * 25 per centum ad valorem; * * * bags, envelopes, and all other articles composed wholly or in chief value of any of the foregoing papers, not specially provided for in this section, * * * 35 per centum ad valorem.

The protest makes two claims—first, that if the importation is dutiable under paragraph 324 at all, it should be under the provision for papers wholly or partly covered with metal leaf and not as articles composed wholly or in chief value of such papers. The second and the chief contention is that the articles are dutiable under paragraph 332, which reads as follows:

Papers or cardboard, cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, or other forms, and all post cards, not including American views, plain, decorated, embossed, or printed, except by lithographic process, and all papers and manufactures of paper or of which paper is the component material of chief value, not specially provided for in this section, 25 per centum ad valorem.

The corresponding provisions of the tariff act of 1909 were before this court in United States *v.* Wyman (4 Ct. Cust. Appls., 411; T. D.

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33851). The respective paragraphs considered in that case were paragraph 411, which provided for paper "wholly or partly covered with metal" and articles wholly or in chief value thereof, and the claim was made under the proviso of paragraph 415 of that act, which reads:

Provided, That paper embossed, or cut, die-cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, bands, strips, or other forms, or cut or shaped for boxes, plain or printed but not lithographed, and not specially provided for in this section, shall be dutiable at 35 per centum ad valorem.

The merchandise in that case consisted of embossed paper ornaments composed in chief value of metal-coated paper, and the question presented was under which of these two paragraphs the importation should have been classified. The conclusion of the court was that the importation was dutiable under paragraph 411 as metal-coated paper.

It is claimed by the importer that whereas under paragraph 415 of the act of 1909 the cut-outs, so called, were restricted to those which were "plain or printed but not lithographed," there is no such limitation under paragraph 332 of the present act, as by the construction contended for by the importers, that all that follows after the words "post cards" in paragraph 332 of the present act, to wit, "not including American views, plain, decorated, embossed, or printed, except by lithographic process," should be held to refer only to post cards. In other words, that all post cards, plain, decorated, embossed, or printed, except by lithographic process, are to be dutiable under paragraph 332, and that the provision for paper cut, die cut, or stamped into designs or shapes is not qualified by any terms of limitation.

If this construction of paragraph 332 be accepted we think it would not warrant the conclusion which the importer draws from it. The provision for "cardboard, cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, or other forms," standing alone, we think, should be restricted to papers or cardboard not specifically provided for in other paragraphs. We think, however, that the board was right in holding that the terms "plain, decorated, embossed, or printed, except by lithographic process," relate back to all that precedes them in the paragraph; but it still leaves open the question as to whether papers provided for specifically as "wholly or partly covered with metal leaf" and "articles composed wholly or in chief value" of such paper, would be more specific than the words "plain, decorated, embossed, or printed," or, in other words, whether the word "decorated" should not be restricted to such decoration as would avoid conflict with other specific provisions of the different paragraphs.

But what seems to us of more significance in this paragraph 332 than the point made by importers' counsel is that the paragraph as

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it appeared in 1909 provided for "paper embossed, or cut, or die-cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, bands, strips, or other forms," while it will be noted that the very words which would bring the present importation within the terms of this paragraph, namely, "bands and strips," have been stricken out of the new legislation. It must be assumed that there was some purpose in this and that the paragraph ought now to be restricted to such forms as are *ejusdem generis* in the strictest sense with the shapes or designs named, and the strong inference is that the words omitted were not believed to be of that class. In fact these strips are merely articles of utility, in a sense decorative, it is true, but they are used for tying up parcels, a use to which ordinary twine might be devoted, and when once used serve no other purpose, which is not true of the other shapes named, namely, initials, monograms, lace, and borders, which are supposed to enjoy some permanence of use for decorative purposes. We think that this change in the paragraph is in itself sufficient to exclude the importation here involved from its terms.

This being so, the importation must be held dutiable either as paper or manufactures of paper not specially provided for, or it must fall within the provision for metal-coated paper or articles composed wholly or in chief value of metal-coated paper.

The board, in its holding upon the question of the status of the merchandise, said:

> Moreover, we are fully satisfied from an examination of the sample in evidence that the articles represented thereby are more than mere forms which have been die cut and embossed from metal-coated paper; they are rather, in our judgment, completely finished manufactured articles which are susceptible of immediate use in their imported condition, merely requiring that they be detached at each end. In the use for which they were evidently designed they may be said to resemble pieces of silk ribbon which are commonly employed as ornamental wrappings for candy boxes. * * *
>
> In the case at bar not only have the articles been advanced beyond the state where they might have been considered as consisting of papers wholly or partly covered with metal leaf, but their imported condition shows that they have reached and passed the final stage of manufacture required to transform them into fully finished articles, ready, as imported, for the use for which they were ultimately intended and designed. This condition, therefore, controls the classification of articles, and having passed the final stage of manufacture they must be deemed to be completed articles composed wholly of metal-coated paper, and as such they are specifically provided for in paragraph 324 of the present act, as classified by the collector.

We agree with the conclusion reached by the board. This article, which once was metal-coated paper, is no longer such. It has passed beyond that stage and constitutes a completed article ready for ultimate use, and is an article composed of metal-coated paper. Upon the subject of what constitutes a completed article, see Fenton *v.* United States (1 Ct. Cust. Appls., 529; T. D. 31546); Tilge *v.* United

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States (3 Ct. Cust. Appls., 97; T. D. 32360); Boye Needle Co. *v.* United States (5 Ct. Cust. Appls., 43; T. D. 34009); and Brunswick-Balke-Collender Co. *v.* United States (7 Ct. Cust. Appls., 1; T. D. 36253).

The decision of the board is *affirmed.*

(T. D. 36424.)

Talcum powder.

ROGER & GALLET *et al.* *v.* UNITED STATES (No. 1631).

1. CONSTRUCTION—CONGRESSIONAL INTENT CONTROLS.

Classification by *use* will prevail over an *eo nomine* designation if it appears that Congress so intended.

2. TOILET TALC, HOW DUTIABLE.

Powdered talc, to which a small quantity of boric acid has been added, the use and purpose of which are as a toilet preparation for application to the skin, is dutiable according to that use under paragraph 48, tariff act of 1913, and not as ground talc under paragraph 69.

United States Court of Customs Appeals, May 12, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7800 (T. D. 35844).

[Affirmed.]

B. A. Levett for appellants.

Bert Hanson, Assistant Attorney General (*John R. Rafter*, special attorney, of counsel), for the United States.

[Oral argument April 28, 1916, by Mr. Levett and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The importations here are a well known and commonly used toilet article composed chiefly of powdered talc to which a small quantity of boric acid has been added, the function of the latter being antiseptic and healing. The greater part of the importations have also been perfumed. This powder is in small packages, designed and ready for the consumer's use.

It was assessed by the collector and held by the Board of General Appraisers classifiable under paragraph 48 of the tariff act of 1913, which we quote:

48. Perfumery, including cologne and other toilet waters, articles of perfumery, whether in sachets or otherwise, and all preparations used as applications to the hair, mouth, teeth, or skin, such as cosmetics, dentifrices, including tooth soaps, pastes, including theatrical grease paints, and pastes, pomades, powders, and other toilet preparations, all the foregoing, if containing alcohol, 40 cents per pound and 60 per centum ad valorem; if not containing alcohol, 60 per centum ad valorem; floral or flower waters containing no alcohol not specially provided for in this section, 20 per centum ad valorem.

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The importers claim classification under paragraph 69 of the same act, which is as follows:

69. Talcum, ground talc, steatite, and French chalk, cut, powdered, washed, or pulverized, 15 per centum ad valorem.

The importers concede "for the purposes of this case that the article is a toilet preparation, since its chief use is as an application to the skin," and well say "that use is so familiar to everyone that it is unnecessary to discuss it further." Their claim for classification under paragraph 69 rests upon the proposition, not that the imported merchandise is *in fact* talcum or ground talc within the paragraph, for concededly it is composed of talc and at least one other substance, but because, as it is claimed, they have established by the required measure of proof that it is commercially so known.

Upon the question of commercial designation, the importers introduced six witnesses who testified to the following trade designations of the merchandise: One, as talcum, talcum powder, or powdered talc; three, as talcum powder; one, as talcum or talcum powder; and some were of opinion that the commercial designation was the same whether the powder was or was not perfumed. In connection with the evidence of some of these witnesses, orders given for the merchandise by dealers therein and various price lists, trade catalogues, or circulars were introduced from which it appears, and the witnesses so testified, that in buying and selling the perfumed powders they are usually designated by appropriate words, such as "talcum rose," "talcum violet," "violet sec talcum," "fleur d'amour," "cashmere bouquet," "violet talc powder," or other terms descriptive of the particular perfume desired. The evidence tending to show commercial designation is undisputed.

The board in its opinion did not discuss the question of commercial designation, but from the fact that this was the sole claim made by the importers before it, we assume that the board intended to find against them on that issue.

Paragraph 69 is new. Prior to its enactment in the act of 1913, merchandise like that under consideration had been classified under paragraphs similar to or identical with paragraph 48 which may be found in preceding tariff acts.

Talc is imported in the crude rock, in the form of cut talc (what this is, is not very definitely explained), and in the ground or powdered form. It is used in the india rubber and paint industries, in filling cotton cloth, in the paper business, and in the manufacture of face and toilet preparations. The undisputed evidence of Government witnesses is that it is a common article of merchandise, imported in large quantities, and that by far the greater proportion thereof is devoted to uses other than the manufacture of toilet powders.

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The importers' contention is that they have established that these toilet powders are commercially known as talcum, talcum powder, or powdered talc, and therefore that the same are within the *eo nomine* provisions of paragraph 69 for talcum or ground talc, because as it is claimed talcum and ground talc are synonymous, except as to the word "ground," and include talc in all its forms. They further claim that the statute being so interpreted and the evidence so applied such *eo nomine* designation is a more precise description of the merchandise than the term "applications for the skin" or "toilet preparations" in paragraph 48. They do not, however, extend the discussion to the more precise statutory term, "all preparations *used* as applications for the skin," found in the paragraph.

We assume for the present, without deciding, that the importers' claim of commercial designation as talcum, talcum powder, or powdered talc has been established, and that it brings the merchandise within the *eo nomine* designation of paragraph 69. Without such assumptions it is clear that the imported merchandise would not be within that paragraph because it is something more than talc or ground talc. The boric acid is an additional component and possesses a desirable quality which it imparts to the finished product.

Paragraph 48, stripped of the language that is irrelevant to the issue, may be considered as if it read as follows:

> Perfumery, articles of perfumery, and all preparations used as applications to the skin, including powders and other toilet preparations.

Based upon the assumptions already made with reference to the importers' claim, the issue then reduces itself to this: Under which of the paragraphs shall the merchandise be classified? One which contains the *eo nomine* provision for the article, or the other, which relates to a wide variety of toilet articles described in general terms and also contains the precise description of "all preparations used as applications to the skin, including powders and other toilet preparations?" If the language of this last paragraph was not more definite than "powders and other toilet preparations" the importers' contention would seem to be sound in view of the settled doctrine that an *eo nomine* designation prevails over words of general description. This rule, however, is one of interpretation only, and is based upon the principle that when an article is described by name Congress intends to cover such commodities as are within the meaning of the words employed as the same are generally, definitely, and uniformly understood in the trade and commerce of the country. This, however, is but a rule of construction devised and applied for the purpose of ascertaining the legislative intent, and while of great importance can not be said to be controlling if it appears that Congress intended the classification to be determined by the *use* to which an article is devoted rather than by the *eo nomine* description itself.

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The case of Magone *v.* Heller (150 U. S., 70) is peculiarly illustrative of this principle. There an article concededly sulphate of potash, *eo nomine* referred to in a duty paragraph, was held to be entitled to free entry under a paragraph providing for "substances expressly used for manure." While the question of classification under the *eo nomine* designation when confronted with a competing paragraph providing for exclusive use was not discussed, yet the court could not have reached the conclusion it did had not this question been in mind. The rule was established in the case that where use was the test, as in the term "expressly used for manure," it required classification thereunder of "those substances the only common use of which, either by themselves or in combination with other materials, is for the purpose of fertilizing the soil." It was held that the question of common use was one of fact to be determined according to applicable rules in such cases, and it was said that exclusive use for the designated purpose was not necessary, but that "if the only common use of a substance is to be made into manure, or to be itself spread upon the land as manure, the fact that occasionally, or by way of experiment, it is used for a different purpose will not take it out of the exemption."

This case was reviewed in Magone *v.* Wiederer (159 U. S., 555) and followed, and again considered in Chew Hing Lung *v.* Wise (176 U. S., 156), where it was expressly stated that the contest in the Magone case was "between a clause of the tariff act of 1883, providing for a duty upon sulphate of potash, *eo nomine*, and a clause exempting from duty 'all substances expressly used for manure.'" This quotation was preceded by a general statement of the rule that the commercial designation would control unless there was something else in the law that restrained its operation, and it was declared that the case of Magone *v.* Heller, *supra*, was not subject to such rule, manifestly because of the fact that chief use was the test. See also Fink *v.* United States (170 U. S., 584); United States *v.* Kwong (1 Ct. Cust. Appls., 14; T. D. 30773); United States *v.* Horrax (1 Ct. Cust. Appls., 142; T. D. 31187); Drakenfeld *v.* United States (2 Ct. Cust. Appls., 512; T. D. 32248); Taylor *v.* United States (3 Ct. Cust. Appls., 498; T. D. 33162); Chrystal *v.* United States (5 Ct. Cust. Appls., 489; T. D. 35148).

In the case at bar, as stated, it is conceded that "the article is a toilet preparation, since its chief use is as an application to the skin." *Use* by paragraph 48 is made the test for classification of all preparations so *used*. The merchandise here is a preparation of powdered talc and boric acid, the greater part of which has been perfumed, is chiefly if not wholly used as an application to the skin, and therefore is, under the rule laid down in the cited cases, precisely within the paragraph and dutiable thereunder.

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This interpretation is confirmed by the scope of the paragraph, and, if applied to the importations here, still leaves ample ground for the operation of paragraph 69, because, as appears, the greater part of imported talc would be dutiable thereunder.

In this view of the case we do not determine whether the importers' evidence is sufficient to establish the fact that these powders are definitely, uniformly, and generally known as talcum or ground talc.

The judgment of the Board of General Appraisers is *affirmed*.

(T. D. 36425.)

Wood-shaving ropings.

UNITED STATES *v.* KRONFELD, SAUNDERS & CO. (No. 1666).

1. RELATIVE SPECIFICITY—MANUFACTURE OF WOOD CHIP.

With respect to ropings made of wood chip, paragraph 368, tariff act of 1913, ("manufactures of * * * chip") is more specific than paragraph 176 ("manufactures of wood").

2. THOMPSON *v.* UNITED STATES (2 CT. CUST. APPLS., 37; T. D. 31590) EXPLAINED.

This case held that baskets made of "such wood shavings as are called chip" were dutiable *eo nomine* as baskets of wood, rather than as manufactures of chip. It did not hold that a manufacture of wooden chip was dutiable as a manufacture of wood.

3. EVIDENCE—COLLECTOR'S ACTION PRESUMPTIVELY CORRECT.

There being nothing in the record to overcome the presumed correctness of the collector's classification of the merchandise as a manufacture of chip, under paragraph 368, tariff act of 1913, and not as a manufacture of wood, under paragraph 176, his classification must stand.

United States Court of Customs Appeals, May 12, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38962.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Luke Lamb*, special attorney, of counsel), for the United States.

Comstock & Washburn for appellees.

[Oral argument April 26, 1916, by Mr. Hanson and Mr. Washburn.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The subject of the importation here was classified by the collector in accordance with the advisory report of the appraiser, which is as follows:

The merchandise described on the invoice as wood-shaving ropings consists of an article resembling chenille, composed of cotton and chip, chip chief value, used for festooning, decoration, etc. It was returned for duty as a manufacture of which chip is the component material of chief value at 20 per cent ad valorem, paragraph 368, act of 1913.

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We insert here the material part of paragraph 368:

368. Manufactures of bone, chip, grass, * * * or of which any of them is the component material of chief value, not otherwise specially provided for in this section, shall be subject to the following rates: * * * Manufactures of * * * bone, chip, * * * 20 per centum ad valorem; * * * bone.

The importers contended and the Board of General Appraisers held that the merchandise was dutiable at 15 per centum ad valorem under paragraph 176 of the same act, which reads as follows:

176. House or cabinet furniture wholly or in chief value of wood, wholly or partly finished, and manufactures of wood or bark, or of which wood or bark is the component material of chief value, not specially provided for in this section, 15 per centum ad valorem.

The only parol evidence as to what in fact the importation is was furnished by a witness for the importers, who testified as follows:

Q. Do you know what it is made of?—A. They say it is made of wood shavings.

* * * * * * *

Q. Used for decorations?—A. Yes, sir.

* * * * * * *

Q. (By Mr. LAWRENCE.) The appraiser states in his special report as follows, "wood-shaving ropings consists of an article resembling chenille composed of cotton and chip, chip chief value, used for festooning, decoration, etc." Do you subscribe to that description of the merchandise and its uses?—A. Well, this is—everybody will know that is only wood shaving, that's all.

Q. (By General Appraiser McCLELLAND.) Counsel wants to know whether you agree with the appraiser in that statement?—A. How can I agree?

Q. If you do not agree, say "no," you do not agree; if you do agree, say "yes."—A. No; I do not agree with it.

How the merchandise is produced from the wood does not appear other than as may be inferred from the quoted evidence and the official sample.

From the sample it appears that wood has been reduced to very thin pieces about three-fourths of an inch in length; that a little bundle composed of one or several of these pieces is bound around the center with a string; that the center of a second like bundle is placed at an angle across the center of the first and bound tightly to it with the same string around its center; that a third bundle in like manner is placed upon and bound to the second, and so on indefinitely, the result being an article rope like in appearance about three-fourths of an inch in diameter, the exterior surface of which is the ends of the pieces of wood that are held together in bundles at the center by the string. At some stage of the operations the wood has been dyed, but when does not appear. This roping is used to make wreaths and balls for decorations, and is also used for festooning. The pieces of wood are so thin as to be very flexible, and wood is assumed to be of chief value. The board sustained the protest in an opinion from which we quote all that can in any sense be said to be a finding as to what in fact the merchandise is:

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The invoice describes the merchandise as "wood-shaving ropings." The testimony on behalf of the importers shows that the shavings are attached to cotton threads and are thus specially prepared for festooning or decorations.

Chip shavings or wood shavings used in the manufacture of hat braids which has been assessed at the rate of 35 per cent ad valorem under paragraph 463 of the tariff act of 1909 as manufactures of chip were held to be dutiable as manufactures of wood under paragraph 215 of that act in Abstract 30943 (T. D. 33055). In Thomsen *v.* United States (2 Ct. Cust. Appls., 37; T. D. 31590) it was held that baskets of wood shavings called chip were subject to duty as baskets of wood.

It would thus appear that these shaving ropings likewise should be dutiable as manufactures of wood, and we accordingly sustain the claim for duty at the rate of 15 per cent ad valorem under paragraph 176.

The Government claims that upon the record "it is an established fact in this case that the article involved is a manufacture of chip or a manufacture of which chip is the component material of chief value."

The importers reply by saying "we read the decision of the Board of General Appraisers as holding that merchandise consisting of wood shavings such as here in dispute is not chip. The decision of the board is tantamount to a finding by that tribunal based upon the record and the sample of the goods that the merchandise involved is not chip in fact." They concede that the provision for manufactures of chip is more specific than the provision for manufactures of wood. Both parties agree that the definition of "chip" stated in Tuska *v.* United States (1 Ct. Cust. Appls., 535; T. D. 31547) as "flat narrow strips of wood, split or shaved to a thinness and flexibility which will permit of their being woven, braided, or plaited into a definite shape or form," is satisfactory for the purposes of this case, the importers, however, contending that the merchandise here is not, properly speaking, narrow strips, and that the pieces are too small and short to be capable of being woven, braided, or plaited.

The board's opinion, it will be noted, states that the importers' evidence shows the importation to be wood shavings attached to a cotton thread and seems to regard it as immaterial to determine whether such wood shavings are or are not chip. Indeed, their reference to "chip shavings or wood shavings used in the manufacture of hat braids," under consideration in Abstract 30943 (T. D. 33055), may indicate that the board regarded the terms as interchangeable, and an examination of the cited Treasury decision seems confirmatory of this view.

The board also refers to the "baskets of wood shavings called chip" under consideration by this court in Thomsen *v.* United States (2 Ct. Cust. Appls., 37; T. D. 31590). In that opinion it was stated that the baskets were made of "such wood shavings as are called chip."

The board evidently understood the Thomsen case as holding that an article manufactured from chip was dutiable, nevertheless, as a manufacture of wood, because chip was concededly a manufacture

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thereof. Such, however, is not the doctrine of that case. The question there was whether the term "baskets of wood" was more specific than "manufactures of chip," and it was held that the *eo nomine* term "baskets" was more specific than the word "manufactures," and that, although the component material was more specifically designated as "chip," the *eo nomine* designation of the completed article must control, that article being in fact made of wood.

In the instant case we do not think the board has found that this roping is not a manufacture of chip. It has, by reason of its misapprehension of the Thomsen case, held that it was a manufacture of wood, and such in one sense, indeed, it is, but if its component material of chief value is chip it is, as conceded, more closely described as a "manufacture of chip" than as a "manufacture of wood." We do not think it can be said on the record here that these so-called wood shavings are not chip within the agreed definition thereof. The merchandise has been assessed as a manufacture of chip and is presumed so to be until the contrary is established. The flexibility and width of the small pieces of wood of which it is chiefly composed are within the definition and, while their length in the importation may not be so, yet there is nothing in the record that establishes that these short pieces were not parts of longer ones which may well have been chip. In other words, wood shavings may be chip within the definition, and a manufacture thereof would be a manufacture of chip. The definition assumes that chip is produced by splitting or shaving wood. The merchandise here is shavings of wood, which implies that it was produced by the shaving process. The short pieces here evidently have been cut from something longer. Whether that something was a long, thin, flat, flexible strip of wood—a chip, in other words—does not appear. The assessment presumes the existence of chip and that the ropings were made from it. The importers have not overcome this presumption.

The judgment of the Board of General Appraisers is *reversed*.

(T. D. 36426.)

Countervailing duty on spirits.

NICHOLAS & CO. *et al.* *v.* UNITED STATES (No. 1594). SHAW & CO. *et al.* *v.* UNITED STATES (No. 1602).

1. CONSTRUCTION—PARAGRAPH E OF SECTION 4, TARIFF ACT OF 1913.

The plain, explicit, and unequivocal purpose of paragraph E of section 4, tariff act of 1913, is that whenever a foreign power or dependency or any political subdivision of a government shall give any aid or any advantage to exporters of goods imported into this country therefrom, whereby they may be sold for less in competition with our domestic goods, the duties on them shall be increased to that extent. It is the *result* of such aid or advantage that Congress seeks to countervail,

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regardless of whatever name or in whatever manner or form or for whatever purpose it was given. Whether the thing done be called "allowance," "bonification," "bounty," "grant," "drawback," or what, matters not. The question is whether or not the result would be to admit the merchandise to our markets at a lower cost price.

2. COUNTERVAILING OF BRITISH "ALLOWANCE" PAID TO EXPORTERS OF SPIRITS.

An "allowance" paid by the United Kingdom to the exporter of spirits is a "bounty or grant" within the meaning of paragraph E of section 4, tariff act of 1913, and justifies the imposition of the countervailing duty provided for by the paragraph.

United States Court of Customs Appeals, May 12, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7758 (T. D. 35595).

[Affirmed.]

Comstock & Washburn (*Albert H. Washburn* of counsel) for appellants in 1594; *W. P. Preble* for appellants in 1602.

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

[Oral argument February 9, 1916, by Messrs. Washburn and Preble and Mr. Mulvaney.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal presents for determination the question of the legality of a countervailing duty levied upon spirits imported into the United States from the United Kingdom of Great Britain and Ireland. The countervailing duty was assessed in addition to the regular duties under the provisions of paragraph E of section 4 of the tariff act of 1913 (38 Stat. L., 114), which reads:

E. That whenever any country, dependency, colony, province, or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

On May 25, 1914 (T. D. 34466), the Secretary of the Treasury ascertained, determined, and declared, with due pertinent regulations, that the United Kingdom of Great Britain and Ireland paid or bestowed on plain British spirits 3d. and on British compounded spirits 5d. per gallon, computed at hydrometer proof, and directed

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countervailing duties conformably levied. This importation was subsequently made at the port of New York and duties accordingly assessed by the collector of customs at that port. The importers duly protested.

The protests were overruled by the Board of General Appraisers, whereupon the importers appealed to this court praying a reversal of that judgment.

The laws of Great Britain, the foundation of the action of the collector, originated with the act of Parliament granting excise duties on British spirits and on spirits imported from the Channel Islands of August 28, 1860 (23 and 24 Vict., ch. 129).

Section 1 of that act levied duties upon every gallon of spirits of the strength of hydrometer proof which on and after certain dates therein mentioned were or should be distilled within the United Kingdom, or which having been distilled therein were on said dates in the stock or possession of any distiller, or in any duty-free warehouse, or in removing to such warehouse, and which should be after the several named days taken out for consumption within the United Kingdom.

Section 4 of the act provided:

IV. In consideration of the loss and hindrance caused by excise regulations in the distillation and rectification of spirits in the United Kingdom, there shall be paid to any distiller *or proprietor* of such spirits *on the exportation* thereof from a duty-free warehouse or *on depositing the same in* a customs warehouse on or after the fifth day of March, one thousand eight hundred and sixty, the allowance of twopence per gallon computed at hydrometer proof, and to any licensed rectifier who, on or after the said last-mentioned day, has or shall have *deposited* in a customs warehouse spirits distilled and rectified in the United Kingdom the following allowances—that is to say, on rectified spirits of the nature of British compounds not exceeding eleven degrees over proof as ascertained by Sykes's hydrometer an allowance of threepence per gallon, and on spirits of the nature of spirits of wine an allowance of twopence per gallon, such gallons being computed, respectively, at hydrometer proof.

In 1865 these provisions were amended by section 12 of the act of Parliament (28 and 29 Vict., ch. 98), as follows:

SECTION 12. The allowance of threepence per gallon granted by section four of the act passed in the twenty-third and twenty-fourth years of Her Majesty's reign, chapter one hundred and twenty-nine, to any licensed rectifier in respect of rectified spirits of the nature of British compounds not exceeding eleven degrees over proof, as ascertained by Sykes's hydrometer, shall be payable to any licensed rectifier or compounder in respect of any compound spirits *deposited* under the provisions of this act in any warehouse of customs *or* excise, and *exported to* foreign parts, or used in a customs warehouse for rectifying wines or for any other purpose to which foreign or colonial spirits may be applied under the laws or regulations of the customs; but such allowance shall not be paid until the certificate from the proper officer of customs shall be produced to the officer of excise appointed to pay the said allowance, that such spirits have been *actually exported* or *used* as aforesaid.

In 1880 Parliament (43 and 44 Vict., ch. 24) amended all previous acts relating to the manufacture, sale, exportation, and use and

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dutiability of spirits in Great Britain by an act entitled "The spirits act, 1880." This act provided also for various warehouses. Pertinent provisions thereof are as follows:

"Spirits" means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations made with spirits.

* * * * * * *

"British spirits" means spirits liable to a duty of excise.

* * * * * * *

"Plain spirits" means any British spirits (except low wines and feints) which have not had any flavor communicated thereto or ingredient or material mixed therewith.

* * * * * * *

"Spirits of wine" means rectified spirits of the strength of not less than 43 degrees above proof.

* * * * * * *

"British compounds" means spirits redistilled or which have had any flavor communicated thereto, or ingredient or material mixed therewith.

* * * * * * *

"Methylate" means to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage, and "methylated spirits" means spirits so mixed to the satisfaction of the commissioners.

* * * * * * *

"Warehouse" means any warehouse approved or provided for the deposit of spirits.

"Distiller's warehouse" means an approved warehouse on the premises of a distiller.

"Excise warehouse" means a warehouse approved or provided by the commissioners as a general warehouse for the deposit of spirits.

"Customs warehouse" means a warehouse approved or provided by the commissioners of customs for the deposit of spirits.

* * * * * * *

13. (1) Every distiller must, to the satisfaction of the commissioners, provide a spirit store and cause it to be properly secured.

(2) The spirit store must be kept locked by the officer in charge of the distillery at all times except when he is in attendance.

* * * * * * *

45. Subject to the prescribed regulations and the prescribed security, spirits may be removed from a distiller's spirit store *for exportation* or for ship's stores without payment of duty.

* * * * * * *

49. (1) A distiller may provide a warehouse on his premises for warehousing spirits distilled on the same premises without payment of duty.

(2) Every such warehouse must be approved by the commissioners and entered by the distiller.

50. (1) The commissioners may approve excise warehouses for warehousing spirits *without payment of duty*. Such warehouses shall be for the general accommodation of persons desiring to warehouse spirits.

* * * * * * *

54. The commissioners may, if they think fit, themselves provide excise warehouses and may charge for spirits warehoused therein, warehouse rent at the prescribed rate, not exceeding 1 penny per week for 40 gallons. This rent must be paid by the *proprietor* of the spirits to the collector, and shall be a lien on all spirits warehoused in the same warehouse belonging to such proprietor.

* * * * * * *

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57. Where a distiller has given the prescribed security under which *he may remove spirits from one warehouse to another*, he may, subject to the provisions of this act and to the prescribed regulations, remove any spirits directly from his store to an excise or customs warehouse, and all spirits so removed shall be deemed to have been first warehoused in the distiller's warehouse and removed therefrom under the provisions of this act.

* * * * * * *

62. Spirits in a distiller's warehouse may, on the prescribed security being given by the distiller, *be transferred to a purchaser*, but no further transfer may be made of them remaining in the same warehouse.

63. British spirits warehoused in an excise warehouse in the *name of a distiller* or *dealer* may be transferred into the *name of a purchaser* on his producing to the officer in charge of the warehouse a written order for the delivery thereof signed by the proprietor of the spirits and countersigned by the proprietor or occupier of the warehouse or his servant acting for him at the warehouse. Spirits so transferred shall be discharged from all claim in respect of duties, penalties, or forfeitures to which the transferor is liable, but *may not be delivered out of the warehouse for home consumption until payment of the duties* chargeable thereon.

* * * * * * *

72. Subject to the provisions of this act, spirits warehoused may, in accordance with the prescribed regulations, and on the prescribed security being given, and at the risk of *the proprietor thereof*, be removed to any other warehouse except a distiller's warehouse.

* * * * * * *

75. (1) Spirits may be delivered from *a warehouse* for home consumption after the full duty chargeable thereon has been paid.

* * * * * * *

79. Where British spirits are delivered *from a customs warehouse for home consumption*, and in all cases where duty is payable on such spirits in such warehouse, the duty payable shall be collected according to the laws and regulations for like spirits in an excise warehouse by the officers of customs under the direction of the commissioners of customs and paid into the Bank of England to the account of the receiver general of inland revenue and dealt with as other duties of excise.

80. Where foreign spirits are delivered *from an excise warehouse for home consumption* the duty payable thereon shall be collected by an officer under the direction of the commissioners *according to the laws and regulations for like spirits in a customs warehouse*, and paid into the Bank of England to the account of the commissioners of customs and dealt with as other duties of customs.

81. (1) *The proprietor of spirits* in a distiller's or excise warehouse may, on giving notice and the prescribed bond, remove the spirits *for exportation without payment of duty*.

82. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations and subject to the conditions, regulations, and restrictions required by any act in force for the time being, be delivered out without payment of duty *for ship's stores*.

83. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations, be delivered out without payment of duty *for methylation*.

* * * * * * *

95. (13) Spirits warehoused for exportation or ship's stores under this section must not be delivered out otherwise than directly from the warehouse to the ship in which they are to be exported or used as stores.

* * * * * * *

117. (1) Methylated spirits shall, subject to the provisions of this act, be exempt from duty.

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(2) If a rectifier methylates duty-paid spirits he shall be allowed *a drawback* at the rate of duty chargeable on British spirits of the like strength.

* * * * * * *

123. (5) Foreign spirits may not be used for methylation until the difference between the duty of customs chargeable thereon and the duty of excise chargeable on British spirits has been paid.

By an act to grant certain duties of customs and inland revenue, August 6, 1885 (48 and 49 Vict., ch. 5, sec. 3), it was further provided:

3. (1) Where any spirits distilled and rectified in the United Kingdom *are exported* from an excise or customs warehouse or are used in any such warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied, there *shall be paid* in respect of every gallon of such spirits, computed at hydrometer proof, the following allowances, that is to say, in respect of plain British spirits and spirits of the wine, an allowance of twopence, and in respect of British compounded spirits, an allowance of fourpence.

(2) The allowance *shall be paid*, in the case of spirits exported, *to the person who shall have given security for the exportation*, and in the case of spirits used in warehouse, to the *person upon whose written request the spirits shall have been so used.*

The finance act of May 30, 1895 (58 Vict., ch. 16, secs. 6 and 7), enacted:

6. Regulations of the commissioners of inland revenue, under section 159 of the spirits act, 1880, may regulate the removal *for exportation* of methylated spirits, and where spirits used for methylation are removed from a place of methylation and exported in accordance with those regulations, there shall be paid *to the exporter* an allowance of 2 pence for every gallon of such spirits, computed of hydrometer proof, and subsection 3 of the customs and inland revenue act of 1885 shall apply, as if the spirits were exported and the allowance made in pursuance of that section.

7. After the 31st day of December, 1895, section 119 of the customs consolidation act, 1876 (which limits the *time for the payment of a drawback* on the exportation of goods), *shall extend to the payment of any allowance* in respect *of spirits exported, used, or deposited*, which is payable under section 3 of the customs and inland revenue act, 1885, as amended by section 21 of the revenue act, 1889, *and to an allowance* in respect of methylated spirits *exported* which is payable under this act, *and* to the *payment of any drawback* of excise which is *allowed on the exportation of any goods*, in like manner as if it were in terms made applicable thereto, and the date of user or deposit were the date of shipment.

The finance act of July 22, 1902, fixed the rates herein applied by the collector. Section 5 thereof, subdivision 1, reads:

5. (1) As from the 17th day of June, 1902, the customs duty of 10 shillings and 4 pence on imported spirits, imposed by section 7 of the customs and inland revenue act, 1881, shall, as respects spirits other than rum and brandy, be 10 shillings and 5 pence, and the allowance of 2 pence and 4 pence *payable* in respect of spirits under section 3 of the customs and inland revenue act, 1885, and section 6 of the finance act, 1895, shall be respectively 3 pence and 5 pence.

Section 8, subdivision 1 thereof, relates to and permits the withdrawal from warehouse of other than methylated goods to be used in manufactures:

8. (1) Where, in the case of any art or manufacture carried on by any person in which the use of spirits is required, it shall be proved to the satisfaction of the com-

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missioners of inland revenue that the use of methylated spirits is unsuitable or detrimental, they may, if they think fit, authorize that person to receive spirits without payment of duty for use in the art or manufacture upon giving security to their satisfaction that he will use the spirits in the art or manufacture, and for no other purpose, and the spirits so used shall be exempt from duty: Provided that foreign spirits may not be so received or used until the difference between the duty of customs chargeable thereon and the duty of excise chargeable on British spirits has been paid.

Regulative thereof is subdivision 1 of section 1 of the act of August 4, 1906 (6th Ed. VII, ch. 20), reading:

1. (1) Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under section 8 of the finance act, 1902, the like allowance *shall be paid* to the authorized methylator *or to the person by whom the spirits are received*, as the case may be, in respect of those spirits *as is payable on the exportation* of plain British spirits, and the commissioners may by regulations prescribe the time and manner of the payment of the allowance and the proof to be given that the spirits have been or are to be used as aforesaid.

All italics in the foregoing excerpts are ours.

By statute (2d Ed. VII, ch. 7, and 6th Ed. VII, ch. 20, and General Order 20/06), universities, colleges, etc., may receive on bond from a distillery or from an excise or customs warehouse limited quantities of British spirits free of duty, and an allowance of 3d. per proof gallon is granted in respect to such spirits. Ham's Yearbook, 1914 (p. 165).

In addition to the specific provisions for drawback, *supra*, the act of July 22, 1902 (2d Ed. VII, ch. 7, finance act of 1902), in the second schedule, provided generally for "drawbacks to be allowed on articles exported or deposited in any bonded warehouse for use as ship's stores, or removed to the Isle of Man, *if it is proved to the satisfaction of the commissioners of customs that the duties on importation have been duly paid.*"

While the foregoing acts express the system and methods of levy, later enactments fix the present rates. These are shown by Ham's Yearbook of 1914, Exhibit A, being a quasi-official authority published by special permission of the commissioners of customs and excise.

The spirit "allowance" continues as in 1902, 3d. and 5d. per proof gallon, as herein assessed. Ham's Yearbook, 1914 (p. 85).

The excise or internal-revenue duty under the finance acts, 1900, 1904, 1905, 1907, and 1910, is per proof gallon, 14s. 9d. Ham's Yearbook, 1914 (p. 88.)

The import duty upon spirits per proof gallon if imported in casks is 15s. 1d. to 15s. 3d.; if imported in bottles, 16s. 1d. to 16s. 3d. Ham's Yearbook, 1914 (third part, p. 149).

The conspicuously pertinent matters presented by the foregoing legislative status may be epitomized as follows: There are three

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kinds of warehouses: (1) A crown or customs warehouse owned by the Government; (2) an excise or general warehouse owned by someone not a distiller and controlled by the Government; (3) a distiller's private warehouse controlled by the Government. That from each of these warehouses spirits may be removed for export without paying duty; but if the "allowance" is to be paid they must be removed from one of the two former only and be taken direct to the ship for exportation or as stores; that goods for home consumption may be removed from any one of these warehouses upon payment of the duties; that all goods, including those for export, may be sold and transferred while warehoused; and, *when the "allowance" is paid upon exportation it is paid to the owner or proprietor and not the manufacturer or distiller* unless the latter be the exporter. So with goods delivered for ships' stores, for methylation or university use the "allowance" is paid to the seller. Upon all potable spirits manufactured and consumed in Great Britain there is laid an inland revenue tax of 14s. 9d. per proof gallon. Upon all such imported in casks 15s. 1d. to 15s. 3d., and in bottle 16s. 1d. to 16s. 3d. per proof gallon import duty is laid. *Upon exportation such British spirits are relieved of all inland revenue tax and in addition thereto an "allowance" is paid out of the public treasury to the exporter* of 3d. per gallon if pure spirits and 5d. per gallon if compounded. Wherefore, the manufacturer, distiller, dealer, or exporter can place his goods in a foreign country at less home cost than he could in his domestic market; although, by reason of the import duty being higher than the excise charged, he is protected in his home market to the extent of that difference.

It must be borne in mind that this appeal concerns only the "allowance" paid exporters of 3d. and 5d. and not the excise duty of 14s. 9d, which latter is never paid upon spirits exported from the United Kingdom of Great Britain. The status of the latter is not here in question.

This appeal presents the question, Is the former payment a "direct or indirect bounty or grant" within paragraph E of section 4 of the tariff act of 1913 (38 Stat. L., 114), *supra*? We think it is, and so hold.

While the briefs and oral argument of counsel for the importers are largely confined to and contend for the narrower use of the word "bounty" as controlling herein, the word "grant," equally a part of the statute and not so confined in amplitude, is but little discussed. The difference in the scope of the words "bounty" and "grant" was elaborately treated in an opinion by Judge Somerville, as a member of the Board of General Appraisers, and later adopted as the opinion of the Circuit Court of Appeals, Fourth Circuit, in Downs *v.* United States (113 Fed., 144), in passing upon section 5 of the tariff act of

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1897 (30 Stat. L., 151), which was the predecessor paragraph of this and employed these exact words. The fact that the word "bounty" alone appeared in the similar provisions of the tariff acts of 1890 (26 Stat. L., 567), paragraph 237, and 1894 (28 Stat. L., 509), paragraph 182½, relating to countervailing duties upon sugar, was by Congress in the later and present acts supplemented by the additional word "grant" is significant of a purpose to extend the latitude of the provision. The familiar rule of statutory interpretation which accords every word of a statute a distinct and different meaning requires that some force and meaning be given the word "grant" beyond and in addition to that enjoyed by the word "bounty." Market Co. *v.* Hoffman (101 U. S., 112, 115); Stephens *v.* Cherokee Nation (174 U. S., 445). A statute will not be construed so as to virtually expunge a distinct member of a sentence. Adams *v.* Woods (2 Cranch, 6 U. S., 336).

Whatever the view as to that matter, however, the court is of the opinion that this "allowance" to exporters is well within the words "bounty or grant" as used in said paragraph E. In Downs *v.* United States (187 U. S., 496, 501), the Supreme Court in interpreting the parent paragraph to this, section 5 of the tariff act of 1897 (30 Stat. L., 151, 205), and approving the definitions of "bounty" by Webster and Bouvier (law dictionary), and the Brussels Conference of 1898, stated:

> A bounty is defined by Webster as "a premium offered or given to induce men to enlist in the public service; or *to encourage any branch of industry*, as husbandry or manufactures." And by Bouvier, as "an additional benefit conferred upon or *a* compensation paid to a class of persons." In a conference of representatives of the principal European powers, specially convened at Brussels in 1898 for the purpose of considering the question of sugar bounties, the definition of bounty was examined by the conference sitting in committee, who made the following report:
>
> The conference, while reserving the question of mitigations and provisional disposition that may be authorized if need be by reason of exceptional situations, is of opinion that bounties whose abolition is desirable are understood to be *all the advantages conceded to manufacturers and refiners* by the fiscal legislation of the States, and *that, directly or indirectly, are borne by the public treasury*.
>
> * * * * * * *
>
> A bounty may be direct, as *where a certain amount is paid upon* the production or *exportation of particular articles*, of which the act of Congress of 1890, allowing a bounty upon the production of sugar, and Revised Statutes, sections 3015–3027, allowing a drawback upon certain articles exported, are examples; or indirect, by the remission of taxes upon the exportation of articles which are subjected to a tax when sold or consumed in the country of their production, of which our *laws, permitting distillers of spirits to export the same without payment of an internal-revenue tax or other burden*, is an example. United States *v.* Passavant (169 U. S., 16).

In Passavant *v.* United States (169 U. S., 16), the Supreme Court, speaking apropos of this subject, declared:

> The certificate of facts states that the German duty is imposed on merchandise when "sold by the manufacturers thereof for consumption or sale in the markets of

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Germany;" and "is collected when the finished product goes into consumption in Germany." As the tax accrues when the manufacturer sells, his wholesale price includes it, and the purchaser who buys these cotton velvets in wholesale quantities in the German markets pays a price covering the tax, and that is the price for the merchandise when bought and sold in those markets.

Doubtless to encourage exportation and the introduction of German goods into other markets, the German Government could remit or refund the tax, pay a bonus, or allow a drawback.

And it is found that in respect of these goods when "*purchased in bond, or consigned while in bond, for exportation to a foreign country, this duty is remitted by the German Government*, and is called 'bonification of tax,' as distinguished from being refunded as a rebate." *The use of the word "bonification" does not change the character of this remission.* It is a special advantage extended by government in aid of manufactures and trade, *having the same effect as a bonus* or drawback. To use one of the definitions of drawback, it is "*a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all.*"

"The law regards the substance, not the shadows, acts done, not the names by which these acts are designated." Whether the thing done be characterized an "allowance," or "bonification," or "bounty," or "grant," or "drawback," or what matters not. The question for the court is whether or not it is within the class of results sought by Congress to be equalized by this paragraph of the tariff act. That construction must be given the paragraph by the court which will most effectually accomplish its manifest purpose. Arnold *v.* United States (147 U. S., 494, 497).

There is nothing obscure, abstruse, mystic, or even ambiguous about this language, which has been, as to the particular words, a part of all our tariff acts from 1897 to and including the present act. Section 5, tariff act of 1897 (30 Stat. L., 151), section 6, tariff act of 1909 (36 Stat. L., 11), paragraph E of section 4, tariff act of 1913 (38 Stat. L., 114). Its plain, explicit, and unequivocal purpose is: Whenever a foreign power or dependency or any political subdivision of a government shall give any aid or advantage to exporters of goods imported into this country therefrom whereby they may be sold for less in competition with our domestic goods, to that extent by this paragraph the duties fixed in the schedule of the act are increased. It was a *result* Congress was seeking to equalize regardless of whatever name or in whatever manner or form or for whatever purpose it was done. The statute interprets itself as a member of an act calculated to maintain an accorded protection, incidental or otherwise, as against payments or grants of any kind by foreign powers, *resulting* in an equalization thereof to any extent directly or indirectly. Wherefore, in obedience to that obvious purpose, the court does not feel at liberty to adopt any constrained or technical definitions of the words "bounty" or "grant" suggested, but to vouchsafe the paragraph a meaning, well within its language, that will best effectuate the unquestioned congressional purpose.

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A great portion of the briefs and record is devoted to an effort to show these payments to exporters of spirits by the United Kingdom to be an equivalent of certain extra costs attending the excise collections. "In consideration of the loss and hindrance caused by excise regulations."

The case of the appellants herein may be said to be well epitomized in Exhibit 6, annex A, which was a document signed on March 1, 1911, by the chairman, deputy chairman, and secretary of the board of customs and excise in London, reading:

> The duty on British spirits is very heavy, and involves the necessity of special precautions being taken to prevent any spirit escaping the duty. These precautions include the imposition upon the manufacturer of a number of statutory requirements and restrictions in connection with his plant and methods of manufacture; which considerably increase the cost of manufacture. *The allowances on exportation are intended to be an equivalent and no more than an equivalent of this extra cost.*
>
> This object has been kept in view in fixing the actual amount of the allowances.
>
> The allowances were originally fixed by Mr. Gladstone in 1860 after prolonged consultation between the revenue authorities and the traders affected. The traders were required to formulate their claims in the fullest detail, stating what restrictions in their opinion increased the cost of manufacture and the exact amount of extra cost attributable to each; every item was closely criticized by the revenue authorities, some being disallowed altogether, and others allowed in whole or in part; with the result that the allowances were fixed at a figure which the revenue authorities accepted as not exceeding the loss caused by revenue restrictions.

The fact that the payment made by the foreign government was estimated or calculated upon a certain basis or in consideration of extra burdens imposed by domestic excise laws, or for any other reason of domestic government or policy commending itself to the wisdom of Parliament, is not controlling with our courts. The sole inquiry is, do the results of such acts stimulate exportation or give a special advantage by affording aid from the public treasury whereby such goods may when exported be sold in competition with ours for less. The Supreme Court in Allen *v.* Smith (173 U. S., 389, 402), has concisely characterized bounties and their origin, saying:

> Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized.

These arguments may well have been addressed as they were to those charged with due adjustment of the added burdens of an excise system, or, possibly, appropriate matters of diplomatic exchanges looking to remedial action, diplomatic or legislative, but the courts must look to the law as enacted and the facts as presented and determine therefrom whether or not the acts done produce results within the terms of the law. If it be true that the excise system delineated intentionally or accidentally results in "an advantage to exporters of spirits to this country from the United Kingdom

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of Great Britain, which directly or indirectly is borne by the public treasury," or affords "a premium in like manner given or paid to encourage any branch of industry or manufactures," likewise exporting, such falls within this paragraph. Downs *v.* United States (187 U. S., 496, 502). And, it matters not, nor is it made by Congress an exception thereto, that it is an incidental, indirect, or *unintended* result of the British Government's endeavoring to in part repay or compensate its manufacturers and distillers for a burdensome excise system. The courts are concerned with results and not intentions.

Indeed, the efficiency of this instrumentality to recoup the manufacturers and distillers this extra cost is not a little difficult to grasp. The fact that under the acts of Parliament this payment may be made not to the manufacturer or distiller who suffers the extra cost but to *any* purchaser of the spirits while warehoused, who may after purchase withdraw them either for export or consumption, is expressive that the system is at least more heedful of the interests of the exporter who has suffered no extra burdens than of the manufacturer or distiller who has. While business acumen dictates that the presence of the possibility of this payment upon export would impel the distiller or manufacturer to exact that much more for his goods, the fact that they may be sold and transferred while in a warehouse from which they may be withdrawn either for consumption or export denies the manufacturer or distiller the certainty of that knowledge necessary to support or enforce the exaction.

In the view that undoubtedly a more equitable and natural system of recoupment of disbursements, based upon extra expenses incurred by *all* the manufacturers and distillers in manufacturing and distilling *all* spirits produced in Great Britain, would be had by payment to those who suffered the extra cost directly in due proportion instead of to a much more limited and necessarily indefinite number of exporters (including vendors of ship's stores) and "proprietors" selling universities necessarily uncertain quantities of spirits, who did not so suffer, serious doubts naturally arise not only as to due receipt of the repayment by its intended beneficiaries but as to other actual though unintended results of the system. Wherefore, the justification made that the system is one solely in compensation of loss and hindrance caused by excise laws and regulations, which for that reason takes the payments out of paragraph E of section 4 of the tariff act of 1913 (38 Stat. L., 114), loses its effectiveness, as the system is so palpably inadequate therefor and not confined thereto that the contention fails. Of course, with the wisdom and policy of the laws of a sister nation this court is not concerned. We are concerned only with their results upon the commerce of the country as designed to be protected by our duly enacted laws. This examination of the statutes and regulations is had because they seem con-

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vincing that their natural commercial operation must utterly fail to insure recoupment of these extra costs to the manufacturers and distillers, whereas they permit exporters and vendors, not suffering such extra costs, to enjoy these payments. The security and certainty of actual repayment to the manufacturer or distiller seem too remote and a pure gift or bonus to the exporter too proximate to support the argument of recoupment made, even were it of force in the case.

Nor does the fact that like payment is made to *proprietors* or manufacturers of foods sold for ship's stores, methylation, and use in the universities change the legal or actual status under our laws of the payments made exporters. As a matter of fact goods for ship's stores are for exportation. As to such the considerations had need not be repeated. An allowance for goods sold universities probably encourages attendance and education by enabling students to purchase them cheaper. That undoubtedly is the result if not the purpose. So the allowance for methylated spirits and goods under section 8 of the finance act of 1902 is in aid and encouragement of manufacturers. But, if that is the result or purpose in such cases, why not so as to exported goods? And if so does not such a payment result in an advantage to and encourage the exporter in foreign competition? And, is that not precisely what Congress sought to equalize by this paragraph? Upon the whole, however, how does the extension of the bounty of a generous government to more than one class of subjects change its character in either case? If A pays B a sum of money without consideration it neither changes nor affects the character of that act should he likewise pay C the same.

One of counsel for the appellants urges that as spirits can only be exported from excise or customs warehouses this payment might upon the ground of added expense of the necessary passing through such warehouses thereby be warranted. There is nothing in the record as to the relative warehouse charges to support the suggestion, and it is contradictory of the theory of the case chiefly relied upon by appellants. It is sufficient to point out that this argument finds its complete refutation by section 59, spirits act of 1880, which reads:

59. The proprietor of any plain spirits *reimported* into the United Kingdom may, on the issue by the commissioners of customs of a bill of store for the spirits, and *on the repayment of the allowance granted on the exportation thereof*, warehouse the spirits in an excise or customs warehouse.

By this paragraph upon reimportation of exported spirits the exporter can rewarehouse them *in either an excise or customs warehouse* and the granted allowance is returned. If the "allowance" is for warehouse charges by *such* warehouses or for "passing through" them because export can only be had therefrom, why return this

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charge after they have been warehoused therein not only *once* but *twice?*

Incidentally, this status develops the thought that the return to the public treasury of this "allowance" deprives the exporter, or let us say the manufacturer or distiller, of that modicum of allowance due for goods which, having already undergone excise regulations, have had cast upon them this extra cost for which the returned moneys were intended compensation.

This section (59) is further illuminative of the effects of the operation of this excise system as to our industries and tariffs. Thereby it is made apparent that while this payment is made to the *importer* upon "exportation" it is only paid upon that exportation which actually enters our commercial field in competition with the sale and consumption of our spirits; for the section provides that if the exported spirits are returned to the United Kingdom the payment made upon exportation must be refunded the public treasury. This payment therefore becomes absolute only when the spirits enter export competition. The effectiveness of the act is confined to actual competition in our domestic trade with our goods. It is a payment in truth not upon exportation but upon the spirits entering and remaining in foreign trade. Wherefore, this section 59 of the spirits act of 1880 manifests an ungenerous disregard of the declared beneficent purposes of the act to reimburse for extra costs in that although the "extra costs" of the burdensome excise laws have been sustained in the production and export of the particular spirits, unless they enter and remain in actual foreign competition and trade, although they undergo the additional burden of rewarehousing and its incidental extra costs, such spirits are denied any participation in the afforded relief.

The well-recognized difference between drawback and bounties, grants, or allowances is nowhere more emphasized or exemplified than in the acts of Parliament quoted. The acts and administrative orders of the Kingdom of Great Britain have ever regarded them as separate and distinct. Allowances are direct payments out of the public treasury upon goods usually not previously imported. Drawback is repayment of moneys previously paid in by the exporters upon goods previously imported. These acts are a sufficient answer to the claim herein, were it not otherwise answered and were that of virtue, that these "allowances" are justified as "drawbacks." Whether or not drawback is a bounty or grant is not an issue herein, and as to that the court expresses no opinion. These payments are not drawbacks but direct payments.

Appellants rely upon a uniformity of departmental practice long continued as supporting their protests. Reference is had in that particular to the existence in some form of the statutes of Great

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Britain from and including the act of 1860. That this Government would be bound by the existence of a statute of Great Britain of which it presumptively has taken, and can take, no notice even in its courts of record unless therein proven, is, in the opinion of this court, without any force. While the first statute of Great Britain upon the subject was passed in 1860, in 1880 there was a general revision of the spirits act, and in 1889 a revision thereof by the finance and revenue acts. Paragraph E of the tariff act of 1913 (38 Stat. L., 114) in its parent, general form first appeared in the tariff act of 1897 (30 Stat. L., 151), was substantially reenacted in 1909 (36 Stat. L., 11), and again in 1913 (38 Stat. L., 114). The changes were as to detail of the bounties and grants alike provided for in each act. Prior thereto there was no general countervailing provision in our tariff laws. The tariff acts of 1890 (26 Stat. L., 567) and 1894 (28 Stat. L., 509) contained such a provision confined to sugar alone. Under the circumstances, admitting the rule contended for, there could be no construction of paragraph E of the tariff act of 1913 (38 Stat. L., 114) until at least the enactment of the tariff act of 1897 (30 Stat. L., 151). It could not be construed before it was enacted. After enactment, as section 5 of the tariff act of 1897 (30 Stat. L., 151), it was not construed as contended for by appellants herein until April 18, 1911 (T. D. 31490). The departmental action negatives rather than supports the contention of appellants. The first interpretation made by the department was January 21, 1911 (T. D. 31229), wherein it held that the payments by the United Kingdom of Great Britain here in question were within the provisions of said section 6 of the tariff act of 1909 (36 Stat. L., 11).

Upon representation, that decision of the Treasury Department was revoked April 18, 1911 (T. D. 31490). On May 25, 1914 (T. D. 34466), the department returned to its original ruling of January 21, 1911. Without other interpretation, of which there was much by the duly constituted tribunals, this alternating practice of approximately three years would not bring appellants within the rule of long continued and uniform departmental practice. Robertson *v.* Downing (127 U. S., 607); Merritt *v.* Cameron (137 U. S., 542, 551); Brennan *v.* United States (136 Fed., 743, 746); United States *v.* Midwest Oil Co. (236 U. S., 459, 476). On the other hand, the construction or interpretation of an inferior Federal court (or reviewing board) prevails over that of an administrative department. Steinmetz *v.* Allen (192 U. S., 543).

Early after the enactment of the parent provision, as section 5 of the tariff act of 1897 (30 Stat. L., 151), and continuously throughout its statutory existence as a part of that act, and of the tariff acts of 1909 (36 Stat. L., 11) and 1913 (38 Stat. L., 114) a uniform construction had been placed thereupon by the Board of General

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Appraisers and the courts contrary in principle to the contention of the appellants. The first case decided by the Board of General Appraisers was in April, 1898, G. A. 4133 (T. D. 19256), construing section 5 of the tariff act of 1897 (30 Stat. L., 151). The point here in question was not there in issue. In September, 1898, the matter of the amplitude of the parent provision, section 5 of the tariff act of 1897 (30 Stat. L., 151), was reviewed by the Board of General Appraisers, G. A. 4261 (T. D. 20039). The case concerned an excise of 27 florins on raw and refined sugars produced in the Netherlands There was a protection upon it of 2.12 florins which was deducted from the excise tax upon domestic consumption, while upon exportation no tax was exacted, but at the same time the bounty was paid. The net result was that if the sugar was consumed in Holland it would have paid a tax of 24.78 florins. Upon exportation, however, no tax was paid and the shipper received a bonus of 2.12 florins. Pertinently the board said:

> *Whatever words may be used to express, explain, or conceal the meaning of the provisions* of the Netherlands sugar law * * * whether the bounties are termed deductions, remissions, or excise, or what not—the table we have given *illustrates the result* and shows that the Netherlands *do give a substantial bounty or grant*, indirect if not direct, on the exportation of sugar.

On appeal to the Circuit Court for the Southern District of New York the decision of the board was reversed. Hills *v.* United States (99 Fed., 425). The Government appealed to the Circuit Court of Appeals, Second Circuit, which reversed the Circuit Court and sustained the board. United States *v.* Hills Bros. Co. (107 Fed., 107). Judge Lacombe in delivering the opinion took occasion to say:

> Undoubtedly, this premium or "deduction" *is called* a bounty on production, and is a bounty on production; but the other provisions of the law have the *practical effect of making it*, from the standpoint of other countries, *a bounty on exportation*. The result of the whole act is no different, so far as the foreign country is concerned, from what it would be had it provided: All sugar producers shall receive a bounty paid in cash from the revenues of the Government of so much per 100 kilos. Those who export their sugar may keep this bounty, those who do not export it must forthwith return it to the Government.

Again, in April, 1901, the subject was exhaustively considered by the board in the Russian sugar bounty cases, commencing with G. A. 4912 (T. D. 22984). The facts of this case are available in its ultimate decision by the Supreme Court. Downs *v.* United States (187 U. S., 496). The board held that the Russian laws were within the provisions of section 5 of the tariff act of 1897 (30 Stat. L., 151). The decision of the board was rendered by Judge Somerville, is one of great merit, and was approved and adopted by the Circuit Court of Appeals, Fourth Circuit, as its opinion. Downs *v.* United States (113 Fed., 144). Part of the adopted language here pertinent was as follows:

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It is important to observe, in the consideration of this subject, that section 5 of the tariff act of 1897, under which this case arises, *does not use the word "bounty" in any narrow or technical meaning.* It embraces "any bounty or grant" bestowed or conferred by the Government, whether directly or indirectly. The word "grant" is more comprehensive in meaning than the term "bounty." It implies the conferring by the sovereign power of some valuable privilege, franchise, or other right of like character upon a corporation, person, or class of persons. * * * Indeed, *the word "grant," in its broad signification, may well include the remission of a tax already levied and assessed by the authority of government.* * * * *The use of the word "bonification" does not change the character of this remission.* * * * And in making this inquiry it is immaterial in what manner the "bounty or grant" was paid or bestowed. The law regards substances, not shadows; things, not names. * * * Looked at from the Russian standpoint, these advantages might, perhaps, be described as a bounty on production; but (in the language of the Circuit Court of Appeals in the Hills Bros. case, *supra*), "from the standpoint of other countries," they become a bounty or grant on exportation. * * * It is immaterial, we may add, whether the price obtained for the exported sugar reaped a profit or inflicted a loss upon the manufacturer or producer. *The simple inquiry is whether at whatever price he may have sold it, he received a bounty or grant of pecuniary value upon its exportation.*

The case on certiorari was reviewed by the Supreme Court in Downs *v.* United States (187 U. S., 496). The language of that court affirming the foregoing is even stronger and is quoted *supra.*

In October, 1901, the board again rendered a decision construing this section in G. A. 5012 (T. D. 23325), wherein the issue presented in the Hills Bros. Co. case, *supra*, was reviewed, the protest overruled, and the duty countervailed. That it is the effect or result of the operation of the foreign law and not the name which is ascribed to the payment that controls decision was held in two similar cases arising in G. A. 5306 (T. D. 24306) and G. A. 5592 (T. D. 25035), the latter construing paragraph 393 of the tariff act of 1897 (30 Stat. L., 151), the pertinent part of which was as follows:

393. * * * *Provided*, That if any country or dependency shall impose an export duty on pulp wood exported to the United States, the amount of such export duty shall be added, as an additional duty, to the duties herein imposed upon wood pulp, when imported from such country or dependency.

The board countervailed the duty. On appeal to the Circuit Court, Northern District of New York, Myers *v.* United States (140 Fed., 648, 654), the following pertinent language was used:

It is not called an export duty by that Dominion, but is imposed as a license fee. *The merchandise can not escape our law, because we call it export duty* and Quebec or Ontario calls it a license. *The question is, What is it in effect and in fact?*

The Circuit Court of Appeals affirmed the board and Circuit Court except upon grounds not involving the question herein involved. See Myers & Co. *v.* United States (144 Fed., 1021). Subsequently that line of decisions was followed in Heckendorn *v.* United States (162 Fed., 141). Certiorari to the Supreme Court of the United States was refused. Heckendorn *v.* United States (214 U. S., 514).

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All claimed and shown by appellants as to the reason or purpose of this payment and the method or basis adopted for its calculation or estimation may be assumed, and the court accepts it as true. All this, however, stops short of the real issue in the case, which, as stated, is the actual result or effect such action has when the exported spirits enter our markets in competition with our goods.

Whatever may have been the purpose or consideration of the payment made upon exportation of these spirits, the incontrovertible fact is present that it necessarily encouraged their exportation and enabled the exporter to sell them at a proportionately less price in competition with the goods of this country. It is a payment directly to the exporter for and upon exportation and the entry of said goods in our body commerce. The doctrine of the case, therefore, may be paraphrased from the language of the Supreme Court in Allen *v.* Smith, *supra:*

> Whether allowed in consideration of services rendered or to be rendered, or with the object of a public interest to be obtained, production or manufacture to be stimulated, or a moral obligation to be recognized, it is a bounty.

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 36427.)

Spruce gum—Drugs.

UNITED STATES *v.* MAINE CENTRAL RAILROAD CO. (No. 1649).

1. CONSTRUCTION—PARAGRAPHS 27 AND 477, TARIFF ACT OF 1913.

   The language in successive prior tariff acts of the provisions corresponding to paragraphs 27 and 477, tariff act of 1913, shows that Congress gradually narrowed their scope until they include those articles only which are drugs within the limitations set by the paragraphs.

2. SPRUCE GUM, HOW DUTIABLE.

   Spruce gum is not a drug as the term is used in paragraph 27 or 477, tariff act of 1913, and hence is classifiable under neither of those paragraphs. It is, then, relegated to the residuary provisions of paragraph 385. The fact that it has been cleaned is not sufficient to make it a manufacture, and, so far as shown by this record, it is dutiable as a nonenumerated unmanufactured article under paragraph 385

United States Court of Customs Appeals, May 12, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38383.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Eugene C. Brokmeyer and *Leonard J. Mather* for appellee.

[Oral argument April 26, 1916, by Mr. Hanson and Mr. Mather.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The merchandise is spruce gum. On importation it was classified and rated for dutiable purposes by the collector of customs at the

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port of Portland, Me., as a "gum advanced in value or condition" under the provisions of paragraph 27 of the tariff act of 1913, reading:

27. Drugs, such as barks, beans, berries, buds, bulbs, bulbous roots, excrescences, fruits, flowers, dried fibers, dried insects, grains, gums, herbs, leaves, lichens, mosses, roots, stems, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, and weeds; any of the foregoing which are natural and uncompounded drugs and not edible and not specially provided for in this section, *but which are* advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture, 10 per centum ad valorem: *Provided*, That no article containing alcohol shall be classified for duty under this paragraph.

The importers made due protest, claiming the merchandise to be entitled to free entry under the provisions of paragraph 477 of that act as a crude drug or gum not advanced in value, which latter paragraph reads:

477. Drugs, such as barks, beans, berries, buds, bulbs, bulbous roots, excrescences, fruits, flowers, dried fibers, dried insects, grains, gums, *gum resin*, herbs, leaves, lichens, mosses, *logs*, roots, stems, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds; any of the foregoing which are natural and uncompounded drugs and not edible and not specially provided for in this section, *and are in a crude state, not* advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture: *Provided*, That no article containing alcohol shall be admitted free of duty under this paragraph.

Italics are ours and indicate the language in each paragraph not common to both.

The Board of General Appraisers sustained the protest. The opinion of the board aptly describes the importation, wherein it states:

From the testimony and samples submitted it appears that the gum has been cleaned to some extent by removing bark, pitch, and other impurities, and in the process of cleaning has been broken into small, irregular lumps. It is further shown by the testimony that, while the gum as scraped from the tree is sometimes dealt in in trade, the bulk of the gum bought and sold has been cleaned the same as the merchandise here imported. So far as this gum may have been broken into slightly smaller lumps, an examination of the samples clearly indicates that effect to be a mere incident to the cleaning.

It is contended, among other things, upon behalf of the Government and controverted by the importers, appellees, that spruce gum, whatever its form or condition, is not a "drug" within the provisions of said paragraphs 27 and 477; that the burden of proof was upon the importers before the Board of General Appraisers in order to sustain their protest under the provisions of paragraph 477 to show the merchandise within the provisions of that paragraph, including the fact that it was a gum or gum resin as therein provided. That the

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burden of proof is upon the importers to prove the allegations of their protest is well settled. Stegemann *v.* United States (5 Ct. Cust. Appls., 393; T. D. 34935); Benjamin Iron & Steel Co. *v.* United States (2 Ct. Cust. Appls., 159; T. D. 31677); Gage Bros. *v.* United States (2 Ct. Cust. Appls., 427; T. D. 32174); Frank *v.* United States (2 Ct. Cust. Appls., 85; T. D. 31633); United States *v.* Park & Tilford (3 Ct. Cust. Appls., 350; T. D. 32907).

Correlative paragraphs pertaining to this subject matter, occurring in the dutiable and free lists, have been the subject of many tariff acts, from 1883, at least, to and including the present act of 1913. It is important here to note only the limiting language of the respective paragraphs, for thereby is indicated a persistent evolution of purpose to restrict the amplitude of this legislative text to articles more essentially drugs. In the earlier acts, 1883 (par. 636), 1890 (par. 560), 1894 (par. 470), and 1897 (par. 548), this paragraph provided for and embraced also "woods used expressly for dyeing." The provision in the act of 1909 (par. 559) was enlarged to "woods used expressly for dyeing or tanning." Probably due to the decision in Leber & Meyer *v.* United States (135 Fed., 243), holding that articles used in dyeing and tanning, such as leaves and stems of the mastic tree, ground or crushed into a finely powdered condition, were not drugs within that paragraph (548) of the act of 1897, but paragraph 482 thereof, providing free entry for "articles in a crude state used in dyeing and tanning," the provision was omitted from the paragraph *in pari materia* in the act of 1913 (477, *supra*), thereby extruding therefrom certain materials not strictly drugs.

So, with practically the same enumerations bringing the force of their characteristics, under the rule of *ejusdem generis*, in support and amplification of the scope of the words "drugs, such as," as indicative of the amplitude of the paragraph, the gradual changes in the express words of limitation are significant. The enumerations, however, were changed from "drugs, barks," etc., in the act of 1883 to "drugs, such as barks," etc., in the act of 1890, and so continues. The express limitations read and were changed as follows: Paragraph 636, act of 1883, "any of the foregoing which are not edible and are in a crude state, and not advanced," etc.; paragraph 560, act of 1890, the same as in the act of 1883; paragraph 470, act of 1894, "any of the foregoing *drugs* which are not edible, and which have not been advanced," etc.; paragraph 548, act of 1897, "any of the foregoing *which are* drugs and not edible and *are in a crude state*, and not advanced," etc.; paragraph 559, act of 1909, and 1913 (477, *supra*), "any of the foregoing which are *natural and uncompounded* drugs and not edible * * * and are in a crude state, not advanced," etc. Epitomized, this legislative course converged the paragraph from an enumeration of "drugs *and* barks," etc., in 1883 to "drugs, such as

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barks," etc., in 1890. While this paragraph of the act of 1890 would probably include all similar articles or things "such as" the enumerations, in 1894 Congress added the express declaration that the classes of the enumerations referred to *were* "drugs." In 1897 Congress further expressly confined the enumerations to articles "*which are* drugs." In 1909 and 1913 further limitation to such drugs as were "natural and uncompounded" was added. This certain, gradual confinement of the provision of Congress to a definite unmistakable scope bears unequivocal and patent witness of the congressional purpose to circumscribe the paragraph in its application to those articles only which are drugs. It follows that the gums and gum resins exempted from duty under this paragraph are only such as are "drugs" as therein defined and limited.

There is no commercial claim or proof made in this record, nor was there any showing made as to either the meaning of the terms or the uses of the articles "drugs" or "spruce gum." The court therefore must resort to the lexicographers as instructive and the only enlightening sources available. The following are concise and representative:

Century Dictionary and Cyclopedia, 1911:

Drug.—1. Any vegetable, animal, or mineral substance used in the composition or preparation of medicines; hence, also, any ingredient used in chemical preparations employed in the arts.

Spruce gum.—A resinous exudation from the balsam fir, *Abies balsamea*, used as a masticatory.

Standard Dictionary, Twentieth Century Edition, 1909:

Drug.—1. Any substance used as a medicine, or an ingredient of chemical compositions used in the arts; in colloquial use, a narcotic.

Spruce gum.—The hardened resinous exudation from the black spruce or the white spruce.

Webster's New International Dictionary, 1910:

Drug.—1. Any substance used as a medicine, or in the composition of medicines, for internal or external use; formerly, any stuff used in dyeing or in chemical operations.

Spruce gum.—A resinous exudation from the white spruce, the black spruce, or the balsam fir, used as a chewing gum.

The term "drug" as used in the United States food and drugs act, June 30, 1906, "shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals."

The foregoing make it obvious that spruce gum, which by this record is assigned no other use than as a masticatory, can in no sense be classed as a drug, either as that word is limited by other pro-

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visions of paragraph 477 or in its broader sense. The same reasoning excludes it from the provisions of paragraph 27 of the act under which it was assessed by the collector. There being no evidence in the record assigning the importation other tariff status, these invoices, so far as appears, should be rated for duty under the unenumerated provisions of the act in paragraph 385. In that view the remaining issue ceases to be whether or not the merchandise is "advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing *of the drugs* and the prevention of decay or deterioration pending manufacture" under paragraphs 27 and 477, and becomes whether or not the goods are "manufactured, in whole or in part," under paragraph 385. Predicating our decision upon the findings of processes applied made by the Board of General Appraisers, *supra*, which are amply sustained by the record, the court is clearly of the opinion that such processes as herein applied did not constitute these importations in whole or in any part manufactured articles. Simpson *v.* United States (2 Ct. Cust. Appls., 222; T. D. 31952); United States *v.* Michelin Tire Co. (1 Ct. Cust. Appls., 518; T. D. 31544); United States *v.* Salomon (1 Ct. Cust. Appls., 246; T. D. 31277); United States *v.* Continental Color & Chemical Co. (2 Ct. Cust. Appls., 165; T. D. 31679); United States *v.* Sheldon & Co. (2 Ct. Cust. Appls., 485; T. D. 32245); United States *v.* Danker & Marston (2 Ct. Cust. Appls., 522; T. D. 32251); Hartranft *v.* Wiegmann (121 U. S., 609).

Being unmanufactured, upon this record, these importations are dutiable as an unenumerated unmanufactured article under said paragraph 385. No question of similitude is made in the case. The decision of the Board of General Appraisers is *reversed.*

(T. D. 36428.)

Malt foods.

BRITT, LOEFFLER & WEIL *v.* UNITED STATES (No. 1670).

1. CONSTRUCTION—MEDICINAL PREPARATION, WHAT IS.

The fact that preparations designed to cure or alleviate, or to palliate or prevent, a disease of the human body, also afford nourishment to the patient does not necessarily exclude them from the classification of medicinal compounds or articles similar thereto (par. 17, tariff act of 1913).

2. CONSTRUCTION—CHANGE OF LANGUAGE SIGNIFIES CHANGE OF MEANING.

The addition, in the tariff acts of 1909 and 1913 to the provision for medicinal preparations already existing in former acts, of a provision for similar substances shows that Congress intended to include within paragraph 17, tariff act of 1913, certain other articles which are not strictly and exclusively medicinal, but which nevertheless possess some therapeutic value.

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3. "MALT SOUP STOCK" AND "FOOD MALTOSE," HOW DUTIABLE.

Packages of less than 2½ pounds of Loeflund's malt soup stock, a preparation of 57 per cent maltose and 12 per cent dextrin with a certain percentage of potassium carbonate, designed to be given, in combination with milk, wheat flour, and water, to marantic infants for their nourishment and to counteract their intestinal acid intoxication, are dutiable under paragraph 17, tariff act of 1913, as being similar to medicinal compounds, and not under paragraph 385 as a nonenumerated manufacture. Loeflund's food maltose, a preparation 60 per cent dextrin and 40 per cent maltose, designed to be given to patients in enfeebled states the result of malnutrition, is subject to the same classification.

United States Court of Customs Appeals, May 12, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7832 (T. D. 36030).

[Affirmed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument April 12, 1916, by Mr. Brown and Mr. Lawrence.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in this case consists of Loeflund's food maltose in tins and Loeflund's malt soup stock in bottles, the individual packages containing less than 2½ pounds each. The importations were made under the tariff act of 1913.

The collector classified the articles as articles similar to medicinal compounds under the provisions of paragraph 17 for "medicinal compounds, combinations, and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of two and one-half pounds or less gross weight," and held that they were subject to a minimum duty of 20 per cent ad valorem as prescribed by that paragraph. Duty was assessed accordingly.

The importers protested against the assessment, claiming that the articles were dutiable at the rate of 15 per cent ad valorem under paragraph 385 as nonenumerated manufactured articles.

The protest was submitted upon testimony to the Board of General Appraisers and was overruled. The importers now appeal.

The following paragraphs of the act of 1913 are here copied for convenient reference.

5. Alkalies, alkaloids, and all chemical and medicinal compounds, preparations, mixtures and salts, and combinations thereof not specially provided for in this section, 15 per centum ad valorem.

17. Chemical and medicinal compounds, combinations and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of two and one-half pounds or less gross weight (except samples without commercial value) shall be dutiable at a rate not less than 20 per centum ad valorem: *Provided*, That chemicals, drugs, medicinal and similar substances,

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whether dutiable or free, imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms, shall be dutiable at not less than 25 per centum ad valorem.

385. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles not enumerated or provided for in this section, a duty of 10 per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of 15 per centum ad valorem.

It may be noted that the foregoing paragraphs do not relate to medicinal preparations which contain alcohol. Preparations containing alcohol are provided for by a different paragraph, which is not here copied, since the present merchandise concededly contains none.

It will be observed that paragraph 5, *supra*, imposes a duty of 15 per cent ad valorem upon all medicinal compounds, preparations, and combinations thereof, not specially provided for in the act, without express reference to the style or size of their individual packages, whereas paragraph 17, *supra*, provides that a minimum duty of 20 per cent ad valorem shall be imposed upon medicinal compounds and combinations, and also upon "all similar articles," if dutiable under the act, whether specially provided for or not, when put up in individual packages of 2½ pounds or less, gross weight. This minimum rate of duty is advanced by the paragraph to 25 per cent ad valorem upon "medicinal and similar substances" if imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms whether the merchandise thus packed be dutiable or free under the act when imported in other packages.

The present issue is whether the articles now in question are within the classification of articles "similar" to medicinal compounds or combinations. If they are such they would concededly be liable to the minimum rate of 20 per cent ad valorem, as prescribed by paragraph 17 and as assessed by the collector.

The "malt soup stock" in question is a proprietary article produced in the dietetic-product laboratory of Ed. Loeflund & Co., Stuttgart, according to the formula of Prof. Dr. Keller, of Berlin. It is said that the formula is to be found in the book of Dr. Kopluk, who is "one of the most noted children's specialists in the United States, and that the book is a standard work in all medical colleges." The article is an unfermented malt product containing 57 per cent of maltose, to which are added 12 per cent of dextrin and a certain percentage of potassium carbonate. According to the directions on the bottle 3½ ounces of the stock are to be dissolved in a pint of warm water, and this is to be mixed with a pint of milk containing 3 ounces of wheat flour properly strained. The mixture is to be boiled, and in the case of young and weak children may be further diluted with water. The stock is said to be "indicated" for use in cases of infantile marasmus. In such cases it is said that

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"the acid intoxication which exists in the gut of these marantic infants is neutralized by this food. The increased ammonia in the urine of these infants is an index of this form of gut poisoning. This ammonia diminishes or disappears from the urine on the administration of these dextrinized gruels." It is recommended that after children increase in weight by taking this food for two or three months they be gradually weaned from it and accustomed to simple milk modifications and other articles of diet. The potassium carbonate which is contained in the stock has the effect of converting milk from an acid to an alkaline reaction.

The second article above named is in the form of a powder. It is labeled "Loeflund's food maltose, malt sugar consisting of dextrine maltose," and is prepared in the same laboratories which produce the former article. The label recommends the article for infants who are in need of easily digestible nourishment, and states that it increases weight and for this reason may be found useful for invalids or convalescents, and that it is "indicated" in enfeebled states the result of malnutrition. In special cases physicians may direct varying proportions of the food maltose, milk, and water. It consists chemically of dextrin and maltose, 60 : 40 parts, and contains no potassium carbonate.

There is a slight conflict between the statements of the importers concerning the characteristics of the articles in question and those made by the manufacturer upon the labels and wrapper of the articles. The facts above stated, however, are those which seem to be established upon the entire testimony when considered together.

It therefore appears that the articles in question are designed as remedies in cases of sickness, and are to be used under the direction of physicians. They are not commonly known as food articles, nor are they to be consumed separately or directly like ordinary articles of food or drink, nor are maltose and dextrin when taken alone known as articles of food. The present compounds are designed to be mixed in small quantities with certain kinds of food, which are prepared for persons, especially infants, who are suffering from certain forms of disease, and in such cases they tend to eliminate certain poisons from the system, thus aiding the digestive processes and at the same time furnishing nourishment to the patient.

Upon the foregoing facts we are inclined to the view that these articles, while not themselves strictly medicinal compounds or combinations, are nevertheless articles which are "similar" thereto. They are similar to medicinal compounds in the following particulars, namely: They are intended for administration to sick persons or convalescents only; they are not suitable nor intended for consumption by people in health; they are designed to be used under the direction of physicians; and their effect upon a patient when adminis-

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tered is in part medicinal. The circumstance that they are prepared in a laboratory and are for sale by druggists is notably consistent with this view.

The word "medicinal" as defined by the dictionaries possesses the meaning of "curative," or "adapted to heal or mitigate bodily diseases." In the case of Dodge *v.* United States (130 Fed., 624, 625), Judge Lacombe in dealing with the term said:

> As to the precise meaning of the word "medicinal," for the purposes of this particular case I will assume—without undertaking to say what may or what may not be the conclusion which the court will arrive at when it becomes necessary, if it does hereafter, to determine the precise meaning of that, I will assume—that it confines the noun with which it is coupled to something which is of use, or believed by the prescriber or user fairly and honestly to be of use, in curing or alleviating, or palliating or preventing, some disease or affection of the human frame.

This tentative definition of the word "medicinal" seems to be broad enough to include the present articles. At least it may be said that these articles are "similar" to those described by the word, according to the foregoing definition of it. For these articles are designed to cure or alleviate, or to palliate or prevent a disease of the human frame. The fact that the articles also afford nourishment to the patient does not necessarily exclude them from the classification of medicinal preparations or articles similar thereto, since various well-known remedies are chiefly valuable for their nutrient qualities. National Dispensatory (1909), Cod-Liver Oil, 1136.

The appellants call especial attention to the decision of the Board of General Appraisers in reference to Du Barry's Revalento Arabica, a lental meal recommended as a nutritious food for invalids, which was held by the board not to be a medicinal preparation under the tariff act of 1894. G. A. 3415 (T. D. 16987). The finding of the board in that case, however, was to the effect that the article then in question was simply a farinaceous food, and the board held that "articles of food, pure and simple, are not medicines." It may be noted also that there was no provision in the tariff act of 1894 for "similar articles" as an allied classification with medicinal preparations or compounds. The foregoing case therefore differs from the present one in respect both to the merchandise and the issue.

It may be noted as a fact having perhaps a very slight bearing upon the present question that the attention of the Ways and Means Committee was called to articles like these by a written brief filed at the hearings preliminary to the present tariff act, wherein a strong appeal was made in favor of placing such articles upon the free list, upon the express ground that they were medicinal preparations possessing great value in the treatment of marasmus and atrophy cases in infants. Hearings before Ways and Means Committee (62d Cong., Doc. 1447, p. 376). It is conceded, however, that such articles were

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not placed by Congress upon the free list in answer to this appeal. It is contended by appellants that they became dutiable under the act as nonenumerated manufactured articles. If, however, they respond to the descriptions of paragraph 17, *supra*, they would thereby be enumerated, even though the paragraph is one for a minimum duty only.

A comparison of the successive tariff provisions in relation to nonalcoholic medicinal preparations may cast some light upon the present question. These provisions are therefore here copied, commencing with the tariff act of 1883.

ACT OF 1883.

Preparations: All medicinal preparations known as cerates, conserves, decoctions, emulsions, extracts, solid or fluid; infusions, juices, liniments, lozenges, mixtures, mucilages, ointments, oleo-resins, pills, plasters, powders, resins, suppositories, sirups, vinegars, and waters, of any of which alcohol is not a component part, and which are not specially enumerated or provided for in this act, 25 per centum ad valorem.

* * * * * * *

Proprietary preparations, to wit: All cosmetics, pills, powders, troches or lozenges, sirups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters, essences, spirits, oils, or preparations or compositions recommended to the public as proprietary articles, or prepared according to some private formula, as remedies or specifics for any disease or diseases, or affections whatever, affecting the human or animal body, including all toilet preparations whatever, used as applications to the hair, mouth, teeth, or skin, not specially enumerated or provided for in this act, 50 per centum ad valorem.

ACT OF 1890.

75. All medicinal preparations, including medicinal proprietary preparations, of which alcohol is not a component part, and not specially provided for in this act, 25 per centum ad valorem; calomel and other mercurial medicinal preparations, 35 per centum ad valorem.

ACT OF 1894.

58. All medicinal preparations, including medicinal coal-tar preparations and medicinal proprietary preparations, of which alcohol is a component part, or in the preparation of which alcohol is used, not specially provided for in this act, 50 cents per pound: *Provided*, That no such preparation shall pay less than 25 per centum ad valorem.

59. All medicinal preparations not specially provided for in this act, 25 per centum ad valorem.

ACT OF 1897.

68. Medicinal preparations not containing alcohol or in the preparation of which alcohol is not used, not specially provided for in this act, 25 per centum ad valorem; calomel and other mercurial medicinal preparations, 35 per centum ad valorem.

ACT OF 1909.

65. Medicinal preparations containing alcohol or in the preparation of which alcohol is used, not specially provided for in this section, 55 cents per pound, but in no case shall the same pay less than 25 per centum ad valorem; calomel, corrosive sublimate,

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and other mercurial medicinal preparations, 35 per centum ad valorem; all other medicinal preparations not specially provided for in this section, 25 per centum ad valorem: *Provided*, That chemicals, drugs, medicinal and similar substances, whether dutiable or free, imported in capsules, pills, tablets, lozenges, troches, or similar forms, and intended for medicinal purposes, shall be dutiable at not less than the rate imposed by this section on medicinal preparations.

ACT OF 1913.

17. Chemical and medicinal compounds, combinations, and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of 2½ pounds or less gross weight (except samples without commercial value) shall be dutiable at a rate not less than 20 per centum ad valorem: *Provided*, That chemicals, drugs, medicinal and similar substances, whether dutiable or free, imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms, shall be dutiable at not less than 25 per centum ad valorem.

It will be observed that the tariff act of 1883 seems to have used the terms "medicinal preparations" and "proprietary preparations" with a very broad and comprehensive meaning. The act of 1890 imposed duty upon "all medicinal preparations, including proprietary preparations, * * * not specially provided for." The act of 1894 adopted the enumeration of "all medicinal preparations, * * * not specially provided for." The act of 1897 repeated the enumeration of "medicinal preparations * * * not specially provided for."

The tariff act of 1909, however, enumerated "all other medicinal preparations not specially provided for," and furthermore provided that "medicinal and similar substances," whether dutiable or free, when intended for medicinal purposes, and imported in certain forms in which medicines are commonly put up, should be dutiable at a rate not less than that imposed on medicinal preparations. This was the first tariff revision in which the classification of "similar substances" or "similar articles" was conjoined with that of medicinal preparations or compounds.

The foregoing provision of the act of 1909 was reenacted with enlarged application in the tariff act of 1913. This provision manifestly does not comprehend any article which is simply a form of food, nevertheless it indicates a legislative purpose to bring within the given rate of duty not only compounds and combinations which are strictly and exclusively medicinal in character, but also certain other articles which are not strictly and exclusively medicinal, but which nevertheless possess some therapeutic value, and because of this quality and of the form in which they appear in the trade are known and sold to the public as remedial agencies. Articles having the form, characteristics, and use of the present merchandise seem to fall within this description.

The decision of the board is therefore *affirmed*.

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(T. D. 36429.)

Plant quarantine act.

Collectors instructed relative to the observance of the general regulations under the plant quarantine act issued by the Department of Agriculture on May 15, 1916, to take effect on July 1, 1916.—T. D. 34625 of July 11, 1914, amended accordingly.

TREASURY DEPARTMENT, *May 23, 1916.*

To collectors of customs:

Your attention is invited to copies of a circular entitled "Rules and regulations governing the importation of nursery stock into the United States," issued by the Department of Agriculture on May 15, 1916, to take effect on July 1, 1916, which have been forwarded to you by mail and by which you will be governed.

The Secretary of Agriculture states that these revised regulations are substantially the same as those now in effect; that the most important change is the provision that permits to import nursery stock from countries which maintain nursery-stock inspection and permits to import orchids and tree seeds from countries which do not maintain nursery-stock inspection instead of being reissued each year will be valid until revoked; that a list of the countries which maintain nursery-stock inspection is given on page 10; and that the list of plants the entry of which is prohibited is brought up to date.

T. D. 34625 of July 11, 1914, is amended accordingly.

(92655-19.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36430.)

Drawback on Panama hats.

T. D. 35112 of February 4, 1915, extended to cover finished Panama hats manufactured by the Ecuadorian Panama Hat Co., of New York, N. Y., with the use of Panama hats imported in a rough and unfinished condition.—T. D. 29324 of November 2, 1908, revoked.

TREASURY DEPARTMENT, *May 23, 1916.*

SIR: The department's regulations of February 4, 1915 (T. D. 35112), providing for drawback on hats manufactured by the Blum & Lehman Co., of Philadelphia, Pa., are hereby extended, so far as applicable, to cover finished Panama hats manufactured by the Ecuadorian Panama Hat Co., of New York, N. Y., with the use of Panama hats imported in a rough and unfinished condition.

The sworn statement of the manufacturers, dated April 27, 1916, is transmitted herewith for filing in your office.

T. D. 29324 of November 2, 1908, is hereby revoked.

Respectfully, ANDREW J. PETERS,

(59568.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36431.)

Drawback on dress shields.

Drawback on dress shields manufactured by the I. B. Kleinert Rubber Co., of New York, N. Y., with the use of imported silk piece goods.—T. D. 23103 of June 8, 1901, T. D. 24405 of May 2, 1903, T. D. 26357 of May 11, 1905, T. D. 29270 of September 25, 1908, T. D. 29560 of February 19, 1909, T. D. 30714 of June 23, 1910, and T. D. 32373 of April 4, 1912, revoked.

TREASURY DEPARTMENT, *May 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on dress shields manufactured by the I. B. Kleinert Rubber Co., of New York, N. Y., with the use of imported silk piece goods after the same have been dyed for its account by the United Piece Dye Works, of Lodi, N. J.

The allowance shall not exceed the quantity of dyed imported silk appearing in the exported dress shields, as shown by the manufacturers' sworn statement of April 21, 1916, which is transmitted herewith, together with the sworn statement of the United Piece Dye Works, dated May 2, 1916.

Supplemental sworn schedules covering additional sizes and kinds of dress shields may be filed and upon verification of such supplemental schedules drawback may be allowed on the same dress shields covered thereby.

T. D. 23103 of June 8, 1901, T. D. 24405 of May 2, 1903, T. D. 26357 of May 11, 1905, T. D. 29270 of September 25, 1908, T. D. 29560 of February 19, 1909, T. D. 30714 of June 23, 1910, and T. D. 32373 of April 4, 1912, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(27550.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36432.)

Drawback on cigarettes and smoking tobacco.

Drawback on cigarettes and smoking tobacco manufactured by the Turco-American Tobacco Co., of New York, N. Y., with the use of imported Turkish leaf tobacco.

TREASURY DEPARTMENT, *May 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarettes, namely, "Kef," "Turkey Land," "Astron," and "Baronet," and on smoking tobacco manufactured by the Turco-American Tobacco

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Co., of New York, N. Y., with the use of imported Turkish leaf tobacco.

The allowance shall not exceed the quantity of imported Turkish leaf tobacco appearing in the exported products, as shown by the sworn statement of the manufacturers, dated May 10, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules may be filed covering other brands of cigarettes and tobacco, and upon verification of the same drawback may be allowed on the cigarettes and smoking tobacco covered thereby.

Drawback may be allowed under these regulations on cigarettes and smoking tobacco exported on and after December 3, 1915.

Respectfully, ANDREW J. PETERS,
(41186.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36433.)

Boarding of vessels.

The Department of Commerce regulations governing the boarding of vessels published for the information and guidance of customs officers.—Article 113 of the Customs Regulations of 1915 amended accordingly.

TREASURY DEPARTMENT, *May 23, 1916.*

To collectors of customs and others concerned:

The appended copy of circular No. 270 of the Department of Commerce (Bureau of Navigation), dated May 4, 1916, containing the regulations of that department governing the boarding of vessels, is published for the information and guidance of collectors of customs and others concerned.

Article 113 of the Customs Regulations of 1915 is amended accordingly.

ANDREW J. PETERS, *Assistant Secretary.*

[Supersedes Treasury Department Circular No. 90, June 18, 1900.]

BOARDING OF VESSELS.

DEPARTMENT OF COMMERCE, *May 4, 1916.*

To collectors of customs and others:

The attention of customs officers, masters of vessels, and others is invited to the following provisions of the act approved March 31, 1900, entitled "An act concerning the boarding of vessels:"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury [1] is hereby authorized and directed to prescribe from time to time and enforce regulations governing the boarding of vessels arriving at the seaports of the United States, before such vessels have been properly inspected and placed in security, and for that purpose to employ any of the officers of that department.

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[1] The duty of prescribing and enforcing these regulations was transferred to the Secretary of Commerce by the act of February 14, 1903.

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SEC. 2. That each person violating such regulations shall be subject to a penalty of not more than $100 or imprisonment not to exceed six months, or both, in the discretion of the court.

SEC. 3. That this act shall be construed as supplementary to section 9 of chapter 374 of the Statutes of 1882, and section 4606 of the Revised Statutes.

The provisions of section 9 of the passenger act of August 2, 1882, which relate only to vessels whereon emigrant passengers, or passengers other than cabin passengers are carried, are as follows:

It shall not be lawful for the master of any such steamship or other vessel, not in distress, after the arrival of the vessel within any collection district of the United States, to allow any person or persons, except a pilot, officer of the customs, or health officer, agents of the vessel, and consuls, to come on board of the vessel, or to leave the vessel, until the vessel has been taken in charge by an officer of the customs, nor, after charge so taken, without leave of such officer, until all the passengers, with their baggage, have been duly landed from the vessel; * * *. For a violation of either of the provisions of this section, or for permitting or neglecting to prevent a violation thereof, the master of the vessel shall be liable to a fine not exceeding $1,000.

The provisions of section 4606 of the Revised Statutes are as follows:

Every person who, not being in the United States service, and not being duly authorized by law for the purpose, goes on board any vessel about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, without permission of the master, shall, for every such offense, be punishable by a fine of not more than $200, and by imprisonment for not more than six months; and the master of such vessel may take any such person so going on board into custody, and deliver him up forthwith to any constable or police officer, to be by him taken before any justice of the peace, to be dealt with according to the provisions of this title.

Pursuant to the act of March 31, 1900, as amended by the act of February 14, 1903, the following regulations for the boarding of vessels are prescribed:

(1) These regulations shall not apply to a passenger steamship of a regular line, but they shall apply to any other merchant vessel arriving from a foreign port or from a port in another great district (except from a port in an adjoining State) or from Porto Rico, Hawaii, or the Philippines.

(2) It shall not be lawful for any person, with or without the consent of the master, except a pilot, officer of the customs, health officer, agent of the vessel, or consul, to go on board of a vessel not in distress arriving at any seaport of the United States until the vessel has been properly inspected by the customs and quarantine officers and placed in security by being brought to the dock or anchored at the point at which cargo is to be taken or discharged.

(3) It shall not be lawful for the master of any vessel not in distress arriving at any seaport of the United States to allow any person or persons, except a pilot, officer of the customs, health officer, agent of the vessel, or consul, except as provided in regulation 5, to go on board of the vessel until the vessel has been properly inspected by the customs and quarantine officers and placed in security by being brought to the dock or anchored at the point at which cargo is to be taken or discharged. The keeper, runner, or any agent of a sailors' boarding house, or any person soliciting seamen for any purpose, shall not in any case be allowed to board any vessel until such dock or anchorage has been reached.

(4) It shall not be lawful for any person in charge of a tugboat, rowboat, or other vessel to come alongside and put any person, except as authorized by law or regulations, on board an incoming vessel heretofore described.

(5) The collector, or other chief officer of the customs where there is no collector, upon application by the owner or agent of a vessel, is authorized to issue permits in special cases and on satisfactory grounds to persons other than those above specified to board such vessel, subject to the master's consent, after it has been properly inspected by customs and quarantine officers and before it has been placed in security as above provided. In case of emergency permits to board a vessel before it has

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been inspected may be issued, but any person to whom such permit may be granted shall be subject to customs and quarantine regulations. In the case of vessels provided for by the act of 1882, above quoted, permits shall be issued subject to the limitations provided in section 9 of that act. A permit shall not in any case be issued to the keeper, runner, or any agent of a sailors' boarding house or to any person soliciting seamen for any purpose.

(6) Upon boarding a vessel for customs or quarantine inspection the boarding officers will furnish a copy of these regulations to the master. Copies of the regulations may also be furnished to pilots and masters of tugboats, with the request that they be supplied to the masters of incoming vessels in their charge.

(7) Officers boarding a vessel under authority of these regulations shall also ascertain whether any person has boarded the vessel in violation of law, and if so, shall report the facts to the principal officer of the customs at the port.

(8) The Coast Guard is specially charged with the enforcement of these regulations, but any officer of the Government may report to the principal officer of the customs any violation of the regulations which comes to his knowledge.

(9) The principal officer of the customs shall report the facts to the United States attorney and also to the department.

(10) The principal officer of the customs, or the officer commanding a Coast Guard cutter, or the principal officer of the Public Health Service at any seaport, when he deems it desirable, and when it is practicable, may detail any person subject to his orders to remain on board a vessel to secure the enforcement of these regulations until the vessel has been placed in security as above provided. In the case of deep-sea sailing vessels such detail shall be made whenever practicable.

WILLIAM C. REDFIELD, *Secretary.*

(T. D. 36434.)

Drawback on medicinal and toilet preparations, etc.

Drawback on medicinal and toilet preparations and flavoring extracts manufactured by Parke, Davis & Co., of Detroit, Mich., with the use of domestic tax-paid alcohol and various imported materials.

TREASURY DEPARTMENT, *May 24, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on medicinal and toilet preparations and flavoring extracts manufactured by Parke, Davis & Co., of Detroit, Mich., with the use of domestic tax-paid alcohol and imported duty-paid materials.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated April 15, 1916, transmitted herewith, showing, in the case of each lot of medicinal or toilet preparation or flavoring extract manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the kind and quantity of preparation or extract manufactured, the quantity and identity of domestic tax-paid alcohol and of each kind of imported material used, the quantity of preparation or extract obtained therefrom, the quantity of waste resulting, and the value of such waste, if any.

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A sworn abstract from such manufacturing record shall be filed with the drawback entry. The allowance shall not exceed the quantities of domestic tax-paid alcohol and imported materials used in the manufacture of the exported preparations and extracts, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

Supplemental sworn schedules covering other medicinal and toilet preparations and flavoring extracts may be filed, and upon verification of the same drawback may be allowed on the preparations and extracts covered thereby.

Respectfully, ANDREW J. PETERS,
(93087.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 36435.)

Jacquard figured nettings.

Appeal directed from decision of the Board of United States General Appraisers of April 28, 1916, G. A. 7898 (T. D. 36363), involving the classification of certain Jacquard figured cotton nets or nettings.

TREASURY DEPARTMENT, *May 24, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 12th instant, inviting attention to the decision of the Board of United States General Appraisers of April 28, 1916, G. A. 7898 (T. D. 36363), involving the classification of certain Jacquard figured cotton nets or nettings.

The merchandise was assessed with duty at the rate of 60 per cent ad valorem under the provisions of paragraph 358 of the tariff act of October 3, 1913, for nets or nettings of whatever yarns, threads, or filaments composed, while the board held it dutiable at the rate of 35 per cent ad valorem under the provisions of paragraph 258 of the said act for Jacquard figured upholstery goods composed wholly or in chief value of cotton.

In order that there may be a judicial determination of the question, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(75852.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36436.)

Drawback on waterproofed cloth.

Drawback on waterproofed cloth manufactured by the Tate Electro Waterproofing Corporation, of New York, N. Y., with the use of imported cotton piece goods.

TREASURY DEPARTMENT, *May 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on waterproofed cloth manufactured by the Tate Electro Waterproofing Corporation, of New York, N. Y., with the use of imported cotton piece goods.

The allowance shall not exceed the net yardage of the exported waterproofed cloth.

The sworn statement of the manufacturers, dated May 15, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on waterproofed cloth exported on and after March 20, 1916.

Respectfully, ANDREW J. PETERS,
(104900) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36437.)

Depreciated currency.

When an importer enters in depreciated currency and the appraiser's return reads "entered value correct" this return should be construed to sustain the entered value. The appraiser should state the kind of currency in which advance is made. The conversion of currency is a function of the collector.

TREASURY DEPARTMENT, *May 27, 1916.*

SIR: The department refers to your letter of January 27 last, submitting for instructions in regard to the liquidation or reliquidation of entries Nos. 91483, 96312, 97266, 87692, and 97468, covering merchandise invoiced in depreciated currency.

The invoices filed with entries Nos. 91483 and 96312 have attached thereto certificates of depreciation (Form 144) and the entered value in each case is on the basis of the depreciation shown by the consular certificate.

The appraiser returned the invoice value of the merchandise covered by entry No. 91483 "correct," but in standard currency. In the case of the invoice pertaining to entry No. 96312, the appraiser added to make market value on account of the invoice being made out in depreciated currency. On appeal by the importers, the final reappraised values sustained the invoice value in the case of entry No. 91483 and the entered value in entry No. 96312.

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On the foregoing statement of facts the department is of the opinion that entry No. 91483 should be liquidated upon the entered value, the currency being converted into United States money upon the basis of the consular certificate and regular duties only assessed, and entry No. 96312 reliquidated upon the same basis, if a protest was duly filed and the protest fee deposited.

Entry No. 97266 covers merchandise invoiced in depreciated lire of Italy, as shown by the currency certificate (Form 144) attached. The invoice unit of value of the merchandise is 180 lire, to which the importer added 5 lire to make market value, and in the entry the importer converted the lire into United States money at the proclaimed value. The appraiser added 24 lire to the unit of value in the invoice to make market value, against which advance the importer appealed to reappraisement, and the final reappraised value was returned as 190 lire. In the liquidation of this entry regular duty should be assessed upon the reappraised value based upon the proclaimed value of the lire, and as this value exceeds the entered value additional duty should be assessed under paragraph I of section 3 of the tariff act.

Entry No. 87692 covers merchandise invoiced in depreciated silver pesetas of Spain, as shown by the consular currency certificate (Form 144) attached, but on entry the importer converted the pesetas into United States money at the proclaimed value. The merchandise was appraised upon the basis of the invoice currency and the appraiser added 84.75 pesetas to make market value. No appeal to reappraisement was taken.

The entered value should be taken as in standard currency, and as such value is greater than the appraised value, on the basis of invoice currency, regular duties only should be assessed in the liquidation of the entry.

The invoice filed with entry No. 97468 is made out in Italian paper lire, which the consul certified on Form 144 to be depreciated, and entry was made on the basis of the percentage of the depreciation shown by the consular certificate. The appraiser advanced two items and stated that the appraisement was in terms of standard currency. The general appraiser approved the unit lire prices found by the appraiser, but disapproved the appraiser's statement in regard to currency as not an appraising function. The reappraised values were affirmed on rereappraisement.

As the merchandise was entered in depreciated paper lire and appraised in lire without statement as to the kind of lire, the department is of the opinion that the return is ambiguous and should not be construed against the importer, but should be taken to sustain the advance in paper lire. In the liquidation of the entry the appraised value should be considered as in depreciated paper lire,

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and as the appraised value exceeds the entered value regular and additional duties should be assessed.

The foregoing representative entries are set forth in some detail to illustrate the difficulties arising in connection with the liquidation of entries in construing the appraising officers' returns when the merchandise is invoiced or entered in depreciated currency. In the opinion of the department, if merchandise is entered, for example, in paper lire or silver pesetas, and the appraising officer's return reads "entered value correct," such return should be construed as sustaining the entered value in the currency stated. When, however, the appraising officer advances the entered value he should state the kind of currency in which his advance is made, as "appraiser adds —— paper lire to make market value," or "appraiser adds —— gold lire to make market value." The value of such currency should not be stated, as the conversion thereof into United States money is a function belonging properly to the collector.

Respectfully, ANDREW J. PETERS,
(104350.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36438.)

Drawback on beans and pease.

Drawback allowed on cleaned beans, cleaned and polished beans, and cleaned pease, manufactured by Webb & Mamel, of New York, N. Y., for and on account of Henry Dyer & Co., of New York, N. Y., with the use of imported beans and pease.

TREASURY DEPARTMENT, *May 27, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cleaned beans, cleaned and polished beans, and cleaned pease produced by Webb & Mamel for and on account of Henry Dyer & Co., both of New York, N. Y., with the use of imported beans and pease.

The allowance shall not exceed the quantity of beans and pease appearing in the exported products, as shown by the sworn statements of Webb & Mamel and Henry Dyer & Co., dated March 21 and May 4, 1916, respectively, which are transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on beans and pease exported on and after February 7, 1916.

Respectfully, ANDREW J. PETERS,
(103568.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36439—G. A. 7911.)

Copper matte.

Merchandise known and recognized in trade and commerce as copper matte is properly entitled to free entry under the provision in paragraph 461, act of 1913, for "regulus of * * * copper." This conclusion is inevitable inasmuch as the terms "copper matte" and "regulus of copper" are synonymous in meaning and refer to the same article.

United States General Appraisers, New York, May 23, 1916.

In the matter of protests 746749, etc., of the Consolidated Kansas City Smelting & Refining Co. against the assessment of duty by the collector of customs at the port of El Paso.

[Reversed.]

Gerry & Wakefield (*James L. Gerry* and *Edwin R. Wakefield* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise covered by these protests consists of so-called copper matte, which was imported into this country from Mexico, and upon which duty was levied at the rate of three-fourths cent per pound upon the lead contained therein, under the following provision in paragraph 152 of the act of 1913:

Lead-bearing ores of all kinds containing more than 3 per centum of lead, ¾ cent per pound on the lead contained therein: * * *.

The importers contend that the merchandise is entitled to free entry as regulus of copper under the following paragraph of said act:

461. Copper ore; regulus of, and black or coarse copper, and copper cement; old copper, fit only for remanufacture, copper scale, clippings from new copper, and copper in plates, bars, ingots, or pigs, not manufactured or specially provided for in this section.

The question here presented has been the subject of a number of rulings by the courts and this board.

In the matter of the protests of the American Metal Co. and Lewisohn Bros., decided by this board in February, 1896, and reported in G. A. 3394 (T. D. 16966), it was held that articles called copper matte were entitled to free entry as regulus of copper; that the term matte was synonymous with regulus, and that the same was not an ore of any kind.

Later, in a case involving a protest filed by the Philadelphia Smelting & Refining Co., this board, in G. A. 4308 (T. D. 20326), followed its former ruling and again held that the article was free as regulus of copper although it was called copper matte. This decision was affirmed on appeal to the Circuit Court of the United States in

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the case of Spencer *v.* Philadelphia Smelting & Refining Co. (124 Fed., 1002).

Still later, in a case involving the protest of the El Paso Smelting Works, this board again decided (G. A. 5119; T. D. 23656) that the article known as copper matte was free as regulus of copper. Likewise, in Abstract 35013 (T. D. 34279), the board followed its former rulings and sustained the claim that so-called copper matte was free as regulus of copper. The last-mentioned ruling was appealed to the Court of Customs Appeals and there affirmed in the case of United States *v.* American Smelting & Refining Co. (5 Ct. Cust. Appls., 398; T. D. 34937), the court holding that "the goods involved in this appeal are copper mattes and are entitled to free entry as regulus of copper, inasmuch as the terms 'copper mattes' and 'regulus of copper' have admittedly come to mean the same thing."

All of the issues in the case at bar have been thoroughly tried out and the brief submitted by counsel for the Government is very elaborate, exhaustive, and complete.

The Assistant Attorney General now seeks to have the board find as facts that the article in question is not regulus of copper; that copper matte is not regulus of copper; that the merchandise under consideration is not a copper matte but is more accurately described as leady copper matte; that the word "regulus" is a foreign term and is not used in this country; that by reason of the discovery of a new process for smelting copper mattes containing lead, the lead which was formerly lost in the process of smelting is now reclaimed and saved, and that because of this newly discovered process the trade no longer recognizes as copper matte any copper matte which contains lead in large or appreciable quantities; that the mattes here in question, being known as leady copper mattes, are distinguished in trade from regulus or ordinary copper mattes, and, being of a different character from the latter, their classification is not necessarily controlled by the decisions of the court and of this board hereinabove cited.

Moreover, counsel for the Government concedes that the articles are not dutiable under paragraph 152 as copper ore, and that the collector's classification thereof as such was made in error. He contends, however, that said merchandise is dutiable under either of the following paragraphs of the present tariff act: Paragraph 153 as a form of lead not specially provided for; paragraph 57 as a lead compound not specially provided for; paragraph 81 as a mineral substance; paragraph 154 as a metallic mineral substance in a crude state or a metal unwrought; paragraph 385 as an unenumerated manufactured article, or under paragraph 386 according to the rate applicable to the component material of chief valuc. But, inasmuch as we have reached a definite conclusion with respect to the tariff

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classification of said articles, it is unnecessary to here discuss any of the several claims alleged in the protests, save that under paragraph 461.

Although the record made up is very voluminous, we are unable to find anything therein which would warrant us in reaching a conclusion different from that heretofore arrived at in the various rulings of the courts and this board. If a change in the law is desired, it can only be brought about through legislation. It is significant, however, that Congress, up to the present time, with all of the prevailing decisions on copper matte or regulus before it, as well as the ruling (T. D. 9473) made by the Treasury Department nearly 27 years ago, has not seen fit to make dutiable the lead contents of copper regulus, otherwise known as copper matte, nor even to fix a maximum limit concerning the amount of lead which may be allowed free entry when contained in copper regulus or matte. This omission on the part of Congress is particularly noticeable when it is observed that specific provision is made for the zinc contents in lead ores and for the lead contents in zinc ores.

The terms "copper regulus" and "copper matte" have uniformly been held to be synonymous in meaning, and the proof here submitted merely tends to corroborate the correctness of such rulings.

The contention of the Government that the word "regulus" is a foreign term which is not used in the trade and commerce of this country, and therefore is not susceptible of commercial proof, can not prevail here. Irrespective of the origin of the word, it has become a domestic term by virtue of congressional enactment. If the meaning thereof can not be ascertained by trade proof or otherwise, then it is perfectly clear that the provision for regulus of copper in paragraph 461 must be held to be null and void on the ground that it is meaningless. There is, however, no justification herein for any such conclusion.

We therefore sustain the claim alleged under paragraph 461 in so far as it purports to cover the merchandise referred to in protests 746749, 746750, 746751, 767141, 770169, 770170, 770171, 770172, 770173, and 755151, except as to lot No. 1716. As to lot 1716, covered by protest 755151, the claim with reference thereto having been formally abandoned, is hereby overruled.

(T. D. 36440—G. A. 7912.)

"R. V. Cream"—Medicinal preparation.

"R. V. Cream," possessing curative qualities, used as a remedy for affections of the skin, such as pimples, blotches, itching, and eczema, but not used as a toilet preparation is ordinarily used, *held* to be dutiable at the rate of 20 per cent ad valorem under paragraph 17, tariff act of 1913, as a medicinal preparation.—Battle & Co. Chemists' Corporation *v.* United States (108 Fed., 218) cited.

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United States General Appraisers, New York, May 23, 1916.

In the matter of protests 760625, etc., of Lamont, Corliss & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Masters & Levett (*Benjamin A. Levett* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers).

McCLELLAND, *General Appraiser:* On the invoices covered by these protests there are several kinds of merchandise against the classification of which protest is made, but as to all except the "R. V. Cream" the protests are either abandoned or no proof has been offered in support of the claims made, so that therefore the protest claims are overruled except as to the "R. V. Cream," as to which the appraiser states in his special report—

The merchandise described on the invoice as "R. V. Cream" consists of a cream specially prepared as an application to the face and is known as a toilet preparation. * * *

It was accordingly assessed with duty at the rate of 60 per cent ad valorem under paragraph 48 of the tariff act of 1913, and the claim is that it is a medicinal preparation and should have been assessed with duty at 20 per cent ad valorem under paragraph 17 of said act.

A number of witnesses were called to testify in support of the contention of protestants and while there was disclosed differences of opinion among them as to the uses to which this cream might be freely and unadvisedly put, they were all agreed that it was sold to be used as an application to the skin, not as a toilet preparation is ordinarily used, but as a remedy for pimples, blotches, itching, mild forms of eczema, or irritations of the skin. It is true that the witness Rodgers, a physician, although called by protestants, testified that he would not prescribe it to be used by a patient except under his own direction, as in his opinion its indiscriminate use unadvisedly would work injury; but, nevertheless, he stated unqualifiedly that, with the exception of the wax, each of the ingredients shown in the qualitative analysis of a sample of the cream (Exhibit 2) possessed healing or curative properties.

The board and the courts have almost innumerable times passed upon issues involving the classification of medicinal preparations, so called, but we fail to find any case wherein there has been given a definite judicial definition of the term "medicinal preparation." The nearest to it that we have been able to find is Battle & Co. Chemists' Corporation *v.* United States (108 Fed., 218), wherein Judge Adams said:

I do not think the evidence, taken as a whole, establishes the proposition of fact contended for by plaintiff that a "medicinal preparation," as used either in commerce

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or by the medical profession, is merely and only such a preparation of drugs and chemicals as is fitted and ready by itself for the use of the patient. If such were the case, as one of the witnesses properly remarks, the term would be limited in its application practically to patent medicines. The term, in my opinion, as shown by all the evidence in the case, rather means any preparation used for remedial purposes for the ailments of the human and animal body. * * * It is the same thing either way—a preparation used by druggists and physicians for remedial purposes—and falls clearly within the term as employed by the acts of 1890 and 1897, a "medicinal preparation."

In the Century Dictionary we find the term "medicinal" defined—

1. Having the properties of a medicine; adapted to medicinal use or purposes; curative; remedial.

And "medicine" is thus defined:

1. A substance used as a remedy for disease; a substance having or supposed to have curative properties; hence, figuratively, anything that has a curative or remedial effect.

From the uncontroverted testimony submitted on behalf of protestants we can not escape the conclusion that the substance in question actually possesses curative qualities and that it is applied as a remedy for some affections of the skin.

For many years prior to the passage of the present tariff law, "Vinolia Cream" was classified as a medicinal preparation and there seems to have been no other reason for the change of classification than that under the new law the examiner passing the merchandise, being of the opinion that it was a toilet preparation, felt warranted in raising the issue under the new act.

The evidence before us is more than sufficient to overcome any presumption of correctness which might be extended to the collector's action in classifying the merchandise at the 60 per cent rate, and the Government has failed to sustain by evidence the legality of the collector's action.

The protest claims for duty at the 20 per cent rate under paragraph 17 are sustained and the decisions of the collector reversed accordingly.

(T. D. 36441—G. A. 7913.)

Weight of butter.

WEIGHT OF BUTTER—METHOD AUTHORIZED BY REGULATIONS.

To determine the net weight upon which importations of butter should be assessed, the Government officials found the gross weight of the butter by weighing the whole shipment in drafts, and from this gross weight deducted an estimated tare arrived at by actually weighing a certain number of boxes out of the shipment. *Held*, this action was proper and in accordance with the method laid down by the Customs Regulations of 1908, articles 1495 to 1498, inclusive, there being no require-

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ment therein that the net weight shall be found, as the importers contend, by stripping and weighing the butter alone.—Popper, Gray & Co., G. A. 6985 (T. D. 30380), followed.

United States General Appraisers, New York, May 26, 1916.

In the matter of protests 793753, etc., of Droste & Snyder against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Arthur H. Lewis, for the importers.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* Two importations of butter from Buenos Aires, South America, are here in question. It is claimed that duty has been exacted on an excessive weight. In the shipment covered by protest 793753 were 1,750 cases, and in the other (protest 793754) were 1,450 cases. The receptacles in which the butter was imported are described as "cases" in the invoices, and spoken of as "boxes" in the testimony. The sole question to be determined is as to the amount of butter, or, which is the same thing, the amount of tare to be deducted from the gross weight of butter.

The invoices contain merely the weight of the butter, no gross weight or tare being mentioned. The testimony shows that the importers, in determining the amount of butter which arrived in this country, stripped, as they term it, 30 cases in the consignment of 1,750 cases and 20 cases in the consignment of 1,450 cases and weighed the butter, and from such weighing arrived at the conclusion that there were 56 pounds of butter to the case. The Government officials weighed the entire consignment in drafts of 10 cases each and tared 3 cases in each consignment, which we take to mean that they weighed 3 cases from each consignment after removing the butter therefrom, thus determining the amount of tare or weight of the cases. Pursuant to these operations as detailed above, the Government finds there were 1,684 pounds of butter in the 1,750-case consignment, and 1,145 pounds in the consignment of 1,450 cases, more than found or admitted by the importers, making something less than 1 pound per case more butter than claimed by the importers.

Tare is provided for in section 2898 of the Revised Statutes, where it is spoken of as real tare, which we interpret to mean the same as actual tare. Under the authority given in said statute, regulations by the Secretary of the Treasury have been promulgated. Those in force at the time of these importations are found in Customs Regulations of 1908, articles 1495–1498, inclusive. The method for obtaining the net weight of a commodity under such regulations was

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pointed out by the board in the case of Popper, Gray & Co., G. A. 6985 (T. D. 30380), in the following language:

> The method thus prescribed by the department (referring to the regulations above cited) is therefore to deduct the weight of the boxes, casks, and other containers of the merchandise from the gross weight. There is no provision made for ascertaining the net weight in any other manner.

We can see no reason for holding that the method pursued by the importers in this case arrived at any more accurate result than that pursued by the Government. It may be observed, however, that in ascertaining the net weight of the butter by taking it from the cases and weighing it, any inaccuracy, or failure to clean the case or take out all the butter, would redound to the benefit of the importers, as it would lessen the net amount of butter upon which duty should be paid. In the same way, the method pursued by the Government under the regulations, if not pursued with the utmost accuracy, would redound also to the benefit of the importers, as any butter left in the case weighed to ascertain the tare would be counted as tare and deducted from the gross weight, thus reducing the net amount of butter on which duty is to be paid. Of the two methods, however, we see no reason for not favoring that prescribed by the regulation. Some criticism may be made upon the small number of cases taken to ascertain the tare on these two shipments. It is a matter, however, which is left to the good judgment and discretion of the weigher. The language of the regulation is:

> Whenever a weigher has reason to believe that the invoice or the schedule tare of any merchandise is greater than the real tare, he is authorized and required to ascertain the actual tare, and, when he finds it necessary or is required to ascertain actual tare, as many casks, boxes, or other coverings as may be necessary for that purpose will be emptied and accurately weighed.

We must, therefore, assume that in ascertaining the tare in this case, as many as were thought necessary were weighed, and accurately weighed. We are of the opinion, having in mind what has been heretofore stated in this decision, that the care and accuracy observed by the Government official would be greater than that observed by the importers. It is probable that in emptying the cases a certain amount of butter was allowed to remain attached to the inside of the case. It would take an appreciable amount even to smear the inside in the thinnest way possible. The incentive of the Government official to clean the case thoroughly we think should be presumed. There is nothing in the record to show that the method pursued by the Government official was illegal, or in any way contrary to the contemplated method of procedure laid down by the statute and the regulation. Hence, we must hold that the importers have not shown that the net weight of the butter upon which duty should be paid is

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different from that reported by the Government weigher and adopted upon liquidation by the collector. The protests are therefore overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 2, MAY 23, 1916.

No. 39805.—Protests 785553, etc., of D. Van Nostrand Co. et al. (New York).

BOOKS—TEXTBOOKS.—Books entitled "The Control of Water," by Parker, classified at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed free of duty as textbooks under paragraph 426.

Opinion by FISCHER, G. A. It was found that the author's intention was to meet the general everyday needs and that the books are not textbooks. They were held properly classified under paragraph 329.

No. 39806.—Protest 784979 of C. B. Richard & Co. (New York).

SNAP FASTENERS.—Snap fasteners composed of metal and celluloid, celluloid chief value, classified at 40 per cent ad valorem under paragraph 25, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. The record not supporting the contention that the snap fasteners are composed in chief value of brass, they were held properly classified under paragraph 25.

No. 39807.—Protests 783386-57092, etc., of Gallagher & Ascher (Chicago).

FORCEPS—SURGICAL INSTRUMENTS.—Merchandise reported by the appraiser to be surgical forceps, classified as nippers or pliers at 30 per cent ad valorem under paragraph 166, tariff act of 1913, is claimed dutiable at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the authority of Koch *v.* United States (6 Ct. Cust. Appls., 534; T. D. 36148) the forceps in question were held dutiable under paragraph 167.

No. 39808.—Protest 786458 of S. Borgzinner & Co. (New York).

JEWELRY BOXES.—Jewelry boxes classified as manufactures of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913, and as manufactures of cotton and velvet at 40 per cent under paragraph 257, are claimed dutiable as boxes of paper covered or lined with cotton or other vegetable fiber at 35 per cent under paragraph 324.

Opinion by HOWELL, G. A. The boxes in question were found to be composed of cardboard and paper covered with cotton velvet and lined with silk and cotton cloth (satin) with metal hinges and button. They were held dutiable under the specific provision in paragraph 324 for boxes of paper covered with cotton. Abstract 39582 cited.

No. 39809.—Protests 756421, etc., of Anton Hilbert et al. (New York).

BEADED TRIMMINGS.—Trimmings and ornaments classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as articles composed in chief value of beads at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) the trimmings and ornaments found to be composed in chief value of beads were held dutiable under paragraph 333. Protests sustained in part.

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No. 39810.—Protests 749693, etc., of B. Altman & Co. (New York).

WEARING APPAREL IN PART OF ORNAMENTS.—Articles of wearing apparel classified as in part of ornaments, netting, tuckings, or trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at lower rates under various paragraphs.

Opinion by HOWELL, G. A. Articles found to be composed in chief value of cotton were held dutiable at 30 per cent under paragraph 256, those in chief value of silk at 50 per cent under paragraph 317, and others in chief value of wool at 35 per cent under paragraph 291. G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388) followed. G. A. 7641 (T. D. 34927) followed as to protest fee.

No. 39811.—Protest 788296 of Fredk. H. Griffin (Boston).

COTTON WEARING APPAREL.—Merchandise invoiced as blouses, classified as embroidered wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed not to be embroidered, but dutiable as cotton wearing apparel at 30 per cent under paragraph 256.

Opinion by HOWELL, G. A. It was found that the blouses are composed of cotton and that they are not ornamented with embroidery. They were held dutiable under paragraph 256, as claimed.

No. 39812.—Protests 794842, etc., of Mills & Gibb (New York).

MADRAS MUSLIN.—Madras muslin classified as Jacquard figured upholstery goods at 35 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at a lower rate under various paragraphs.

Opinion by COOPER, G. A. On the authority of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 477; T. D. 36120), the Madras muslin in question was held dutiable under paragraph 258, as classified.

BEFORE BOARD 3, MAY 23, 1916.

No. 39813.—Protest 725634 of Sherwin-Williams Co. (Cleveland).

BRONZE STATUE—REHEARING.—In this case a rehearing was granted but no additional evidence was offered. The merchandise in question is a bronze statue claimed entitled to free entry as sculptures under paragraph 470, tariff act of 1913.

Opinion by WAITE, G. A. The evidence not being sufficient to sustain the protest it was overruled. See Abstract 39045.

No. 39814.—Protest 791928 of Morimura Bros. (New York).

OYSTER SHELLS—CULTURED PEARL.

HAY, *General Appraiser:* This is a protest against the assessment of duty upon certain oyster shells with a so-called cultured pearl attached, under paragraph 385, tariff act of 1913, at 10 per cent. The protest is submitted upon a stipulation entered into by and between counsel for the importers and the Assistant Attorney General adopting the appraiser's report as the statement of fact in this case. From that report it appears that the pearl is attached to the shell in the following manner: Pearl-producing oysters are taken from the sea when they are three years old by Japanese, who introduce into the shell small, round pieces of so-called "nacre." The oyster is again lowered into the sea and allowed to remain for four years. At the end of that period the oyster is taken from the sea, and, at the place where the so-called "nacre" was introduced there has formed what is known as a cultured pearl. Nothing further is done to the shell, and it is in this form, with the pearl attached, that the shells, the subject of this protest, were received. Duty was assessed by the collector as a non-enumerated unmanufactured article. The protestants claim free entry under paragraph 570 as "pearl, mother of, and shells, not sawed, cut, flaked, polished, or otherwise manufactured, or advanced in value from the natural state."

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In Herman Keck Manufacturing Co.'s case, G. A. 5793 (T. D. 25597), cultured pearls similar to those that are attached to the shells in this case were before the board and held to be pearls in their natural state. These had been removed from their shells and in that condition brought in. If the cultured pearl in the case at bar is a pearl when detached, the shell can not be brought in under the provisions of the paragraph claimed, for the commodity is certainly more than a shell. The protest is overruled without affirming the action of the collector.

No. 39815.—Protest 802375 of E. S. Stone (New York).

CANDLESTICKS—REGALIA.—Candlesticks classified under paragraph 167, tariff act of 1913, are claimed free of duty as regalia under paragraph 611.

Opinion by HAY, G. A. The evidence not supporting the claim that the candlesticks are regalia, protest overruled.

No. 39816.—Protest 790081 of Merchants' Importing Co. (New York).

COUNTERVAILING DUTY—PRINTING PAPER.—This protest is against the assessment of countervailing duty on certain printing paper from Norway and Belgium.

Opinion by HAY, G. A. Upon stipulation of counsel certain printing paper was held entitled to free entry. Abstract 39646 followed.

No. 39817.—Protest 786440 of Baltimore & Ohio Railroad Co. (Baltimore).

SCIENTIFIC APPARATUS—CUSTOMS REGULATIONS.—Free entry under paragraph 573, tariff act of 1913, is claimed for certain scientific apparatus.

Opinion by HAY, G. A. The certificate of delivery required in article 710 of the Customs Regulations of 1908 was not filed in time. Protest overruled. G. A. 5539 (T. D. 24909) followed.

No. 39818.—Protests 784323, etc., of John A. Conkey & Co. et al. (Boston).

TEA CONTAINERS.—Lead, tin, paper, and pasteboard containers of tea in individual packages of less than 5 pounds each are claimed entitled to free entry under paragraph 627, tariff act of 1913.

Opinion by HAY, G. A. Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) followed as to the tea containers. Protests sustained in part.

BEFORE BOARD 1, MAY 26, 1916.

No. 39819.—Protest 790394 of W. H. Allison Co. (Detroit).

SCREENS.—Merchandise classified as screens at 20 per cent ad valorem under paragraph 175, tariff act of 1913, is claimed dutiable as furniture of wood at 15 per cent under paragraph 176.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

No. 39820.—Protest 741475-49258 of E. H. Sargent & Co. (Chicago).

POLARISCOPE TUBES—MOUNTINGS FOR OPTICAL INSTRUMENTS.

SULLIVAN, *General Appraiser:* The merchandise consists of so-called polariscope tubes, which were assessed with duty as mountings for optical instruments at 35 per cent ad valorem under paragraph 93, and claimed dutiable as manufactures of metal (brass) at 20 per cent ad valorem under paragraph 167 of the tariff act of 1913.

The official samples consist of two glass tubes, each about 8 inches long. Cemented on the outside of the ends of each of these tubes are threaded steel collars to which are screwed brass caps, each cap having a round hole in the center thereof, slightly smaller than the interior diameter of the tube, so that it is possible, by applying the eye to the hole in the cap at one end of the tube, to look through the tube and the hole in the cap at the other end thereof.

The articles in dispute are used in connection with the polariscope, which is used in the analysis of sugar or sugary liquids.

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Protestants' witness testified:

A polariscope is one of the several varieties of optical instruments which derive their power from the refraction of light, the light being transmitted through the material under observation, which, being a liquid, must necessarily be in some kind of a container.

Therefore the contention of the protestants is that polariscope tubes are mere containers of the liquid through which the light passes and not mountings for optical instruments.

The witness further testified:

Polariscopes are one of several types of optical instruments for measuring the refraction of translucent liquids, in one of the several forms that are used, as refraction, rotation, etc., which all depend on the same general law of physics. Some refractometers being one of a series of instruments, are used by placing the liquid in any translucent container, such as a glass, and dipping the end of the optical instrument into the liquid. The light is passed through the liquid first and then through the instrument. In this case, in the case of these tubes, they take the place of that glass which holds the liquid, and these tubes, when complete, suspend the liquid between the prisms of the type of refracting instrument which is known as a polariscope.

It is admitted that metal is the component material of chief value in the merchandise in question.

These tubes are not the frame or mounting of an optical instrument. To show their uses in connection with the polariscope we quote the following from the testimony:

Q. What is there on the polariscope through which this article is adjusted?—A. The polariscope is a combination of prisms and lenses mounted on groups at opposite ends of a framework; that framework is fitted with means of suspending the liquid under observation between these two groups of prisms and lenses. The light is thrown in from one end and passes through the liquid into the other group of prisms where the distortion, or as we call it, rotation, takes place.

Q. This tube is in the middle?—A. Yes, sir; between the two groups of prisms, one in each end. The tube in one end is called the polarizer and analyzer in the other.

Q. This is the polariscope tube?—A. Yes, sir.

Q. How is this held in place between the two groups of prisms?—A. It rests either in brackets or in a trough in the framework.

Q. These brackets or the trough are permanently adjusted to the polariscope?—A. Yes; they are the framework, integral parts of the frame.

Q. I suppose the polariscope would not be complete without some means of adjusting this tube?—A. You would have to have some way of suspending your sample between the prisms.

This gives us a clear idea of the tubes under discussion, and their use. They are simply convenient means for holding or containing the liquid under examination. They are purely and entirely containers; not frames or mountings for optical instruments. It is true they are used in connection therewith, but by reason of such use they do not become frames or mountings thereof. They are a separate apparatus from the polariscope, while mountings and frames are integral parts thereof. Any apparatus that will contain liquid in such a way as to permit the rays of light to pass through it may be substituted for these articles, but such could not be classified as frames or mountings of an optical instrument. It therefore follows that these tubes, more satisfactorily performing the functions desired than ordinary containers, can not be so classified.

We find this merchandise dutiable at 20 per cent ad valorem under paragraph 167 as articles or wares not specially provided for composed in chief value of metal not plated with gold or silver.

The protest is sustained, and the collector's decision reversed.

No. 39821.—Protests 800661, etc., of Calumet Manufacturing Co. et al., protests 752539, etc., of A. H. Ringk & Co., and protests 763663, etc., of Carl Silverman (Philadelphia and New York).

Crape-Paper Articles—Toys.—Fancy hats composed of crape or tissue paper, so-called "blowouts," and horns made of ordinary paper with tissue-paper tassels,

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classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of paper at 25 per cent under paragraph 332, or as articles composed of tissue or crape paper at 30 per cent under paragraph 323.

Opinions by SULLIVAN, G. A. The hats or caps are used for parties, dances, entertainments, and celebrations by adults as well as children. They were held dutiable at 30 per cent under paragraph 323. Abstract 38875 followed. Protests overruled as to blowouts and paper horns, the evidence not being sufficient to prove that they are not toys.

No. 39822.—Protest 759041 of New England Incandescent Supply Co. (New York).

FLASH-LIGHT CASES OF METAL.—Flash-light cases classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7794 (T. D. 35822), the flash-light cases in question were held dutiable under paragraph 167, as claimed.

No. 39823.—Protest 779576 of A. Strauss & Co. (New York).

PAPER HALLOWEEN NOVELTIES—TOYS.—Masks, caps, and blowouts, of paper, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of paper at 25 per cent under paragraph 332, or as manufactures of tissue or crape paper at 30 per cent under paragraph 323.

Opinion by SULLIVAN, G. A. Masklike head coverings composed of thin cardboard and tissue paper, the fronts of which are in imitation of the faces of cats or demons, or the typical face cut in pumpkins at Halloween, and caps made of colored paper composed chiefly of cardboard, were held dutiable as manufactures of paper under paragraph 332. Abstract 38875 followed. The so-called blowouts are made of paper which has been rendered transparent or partially so, ordinary paper, and cardboard, and two feathers, with a flat metal wire running through the article, and a metal whistle inserted in a mouthpiece. By blowing through the cardboard mouthpiece the article, which is curled by the wire, extends in the form of a narrow paper bag. There is no proof as to the component material of chief value. Protest overruled as to these articles.

No. 39824.—Protest 786148 of Baltimore & Ohio Railroad Co. (Baltimore).

SHAVING SETS—MIRRORS.—Shaving sets composed of a swinging mirror with nickel-plated metal frame, a china soap dish, and a shaving brush with nickel-plated metal handle, mounted on a nickel-plated stand, classified as mirrors at 30 per cent ad valorem under paragraph 95, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7902 (T. D. 36384) the shaving sets in question were held dutiable as manufactures of metal under paragraph 167, as claimed.

No. 39825.—Protests 797711, etc., of James P. Smith & Co. (New York).

GLASS BOTTLES, DECORATED.—Certain bottles classified as decorated at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed to be not decorated, dutiable at 30 per cent under paragraph 83.

Opinion by SULLIVAN, G. A. The bottles in question were held properly classified under paragraph 84. Abstract 39494 followed.

No. 39826.—Protest 800298 of Morimura Bros. (New York).

EASTER BASKETS.—Easter baskets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as baskets at 25 per cent under paragraph 175.

Opinion by SULLIVAN, G. A. The baskets in question were held dutiable under paragraph 175, as claimed. G. A. 7790 (T. D. 35796) followed.

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No. 39827.—Protest 800373 of Geo. Borgfeldt & Co. (New York).

MAGNIFYING GLASSES—MICROSCOPES.—Hand reading glasses classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. The hand reading glasses in question were found to be similar to the pocket magnifying glasses held in G. A. 7859 (T. D. 36174) to be dutiable as microscopes. The claim under paragraph 94 was sustained.

(T. D. 36442.)

Drawback on medicinal preparations.

Drawback on "Wine of Cod Liver Oil, Tasteless," manufactured by the Upjohn Co., of Kalamazoo, Mich., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *May 29, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on the medicinal preparation known as "Wine of Cod Liver Oil, Tasteless," manufactured by the Upjohn Co., of Kalamazoo, Mich., with the use of domestic tax-paid alcohol.

A manufacturing record shall be kept in the manner prescribed in the sworn statement of the manufacturers, dated April 6, 1916, transmitted herewith, which will show, in the case of each lot of the preparation manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and proof of the alcohol used, and the number of bottles of the preparation made. A sworn abstract from such manufacturing record and a certificate of manufacture shall be filed covering each lot of the preparation produced.

In liquidation, the allowance shall not exceed the quantity of alcohol used in the manufacture of the exported preparation, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on "Wine of Cod Liver Oil, Tasteless," exported on and after January 29, 1916.

Respectfully, ANDREW J. PETERS,
(101560-3.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36443.)

Plant quarantine act.

Notice of quarantine No. 24, forbidding the importation of the products of certain corn and closely related plants from certain countries, published for the information and guidance of officers of the customs and others concerned.

TREASURY DEPARTMENT, *May 26, 1916.*

To officers of the customs and others concerned:

The appended copy of notice of quarantine No. 24, issued by the Secretary of Agriculture, under section 7 of the plant quarantine act

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approved August 20, 1912, relative to the importation of the products of certain corn and closely related plants from certain countries, is published for the information and guidance of officers of the customs and others concerned.

The Secretary of Agriculture states that this quarantine notice supersedes quarantine notice No. 21, which was published in T. D. 35286 of April 3, 1915.

(92655–19.) ANDREW J. PETERS, *Assistant Secretary.*

UNITED STATES DEPARTMENT OF AGRICULTURE.
OFFICE OF THE SECRETARY.
FEDERAL HORTICULTURAL BOARD.

NOTICE OF QUARANTINE NO. 24.

[Supersedes No. 21.—Effective on and after July 1, 1916.]

Corn diseases.

The fact has been determined by the Secretary of Agriculture, and notice is hereby given, that maize or Indian corn (*Zea mays* L.) and closely related plants are subject to certain injurious diseases, especially *Peronospora maydis* Raciborski, *Sclerospora sacchari* Miyake and other downy mildews; also the *Physoderma* diseases of maize, *Physoderma zeae-maydis* Shaw, and *Physoderma maydis* Miyake, new to and not heretofore widely prevalent or distributed within and throughout the United States, and that these diseases occur in southeastern Asia (including India, Siam, Indo-China, and China), Malayan Archipelago, Australia, New Zealand, Oceania, Philippine Islands, Formosa, Japan, and adjacent islands.

Now, therefore, I, D. F. Houston, Secretary of Agriculture, under the authority conferred by section 7 of the act of Congress approved August 20, 1912, known as the plant quarantine act (37 Stat. L., 315), do hereby declare that it is necessary, in order to prevent the introduction into the United States of the above-mentioned diseases, to forbid the importation into the United States, in the raw or unmanufactured state, of seed and all other portions of Indian corn or maize (*Zea mays* L.) and the closely related plants, including all species of Teosinte (*Euchlaena*), Job's tears (*Coix*), *Polytoca*, *Chionachne*, and *Sclerachne*, from southeastern Asia (including India, Siam, Indo-China and China), Malayan Archipelago, Australia, New Zealand, Oceania, Philippine Islands, Formosa, Japan, and adjacent islands.

On and after July 1, 1916, and until further notice, by virtue of said section 7 of the act of Congress approved August 20, 1912, the importation into the United States, in the raw or unmanufactured state, from southeastern Asia (including India, Siam, Indo-China, and China), Malayan Archipelago, Australia, New Zealand, Oceania, Philippine Islands, Formosa, Japan, and adjacent islands of seed and all other portions of Indian corn or maize (*Zea mays* L.), and the closely related plants, including all species of Teosinte (*Euchlaena*), Job's tears (*Coix*), *Polytoca*, *Chionachne*, and *Sclerachne*, except for experimental or scientific purposes by the Department of Agriculture, is prohibited.

This notice of quarantine amends and supersedes notice of quarantine No. 21, promulgated March 8, 1915, and shall be effective until otherwise ordered.

Done at Washington this 29th day of April, 1916.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL.] D. F. HOUSTON,
Secretary of Agriculture.

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(T. D. 36444.)

American shooks.

Certificate of exportation required by article 340 of the Customs Regulations of 1915.

TREASURY DEPARTMENT, *June 1, 1916.*

To collectors of customs:

The attention of the department has been called to the fact that in some instances the certificate of exportation covering shooks is not furnished American consuls, as required by the regulations of the department. In other instances it is stated that the certificate is not furnished promptly and does not contain sufficient information.

Collectors of customs are instructed that the certificates should be forwarded promptly and should contain the information given in the notice of intent to export, as provided by article 340 of the Customs Regulations of 1915. Customs officers will be governed accordingly.

(92579.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36445.)

Additional duty—Paragraph V.

An additional duty of 15 per cent imposed for failure to permit the inspection of records, pursuant to the provisions of paragraph V of section 3, tariff act of 1913.

TREASURY DEPARTMENT, *June 1, 1916.*

To collectors of customs and others concerned:

The department is in receipt of a report from the collector of customs at Portland, Me., from which it appears that B. S. Green Bros. Co., a corporation doing business at Houlton, Presque Isle, Caribou, and Danforth, in the State of Maine, has refused to submit for inspection its books, records, or accounts pertaining to certain merchandise imported by the said corporation, upon request made therefor by a duly accredited investigating officer at the request of the collector of customs for the district of Maine.

In view of the foregoing and pursuant to the authority vested in the Secretary of the Treasury by paragraph V of section 3 of the tariff act of October 3, 1913, you are hereby directed to assess an additional duty of 15 per cent ad valorem on all merchandise consigned to or imported by, or shipped, or intended for delivery, to the said corporation of B. S. Green Bros. Co. until further instructed by the department.

(100000-1.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36446.)

Appraisement of zinc ore.

Method of ascertaining the value of zinc in imported ore under the provisions of paragraph L of section 3, tariff act of 1913, based upon the selling price of zinc in the United States.

TREASURY DEPARTMENT, *June 3, 1916.*

To appraisers of merchandise and others concerned:

The following method will be followed by appraising officers in determining the value of zinc in imported ore arriving in the United States after July 1, 1916:

(1) From the ascertained assay deduct 8 units for sulphide and 6 units for nonsulphide ores. The remainder will represent percentage of recoverable zinc in the ore, which multiplied by 2,000 will give the number of pounds of zinc recoverable from a ton of ore.

(2) Multiply the result as above ascertained by the average price of prime western spelter at East St. Louis for the week in which the ore was exported; that is, the week including the date of sailing of the ship or day the car leaves the foreign country. This will give the gross value of the zinc in the ore at the time of its exportation.

(3) Deduct from the gross value of the zinc in the ore as above ascertained the following:

(*a*) The freight actually paid from the foreign mine to the domestic smelter receiving same in the United States.

(*b*) The insurance actually paid.

(*c*) The actual shipping charges.

(*d*) Foreign export duties and charges, if any.

(*e*) Treatment charge (as explained in par. 4).

(*f*) Penalties for iron, as stipulated in paragraph 5.

(*g*) Duty on lead contents, if any.

(*h*) Duty on zinc.

(4) *Treatment charge.*—(*a*) For sulphide ores the treatment charge will be ascertained as follows: From the value of the recoverable spelter in a ton of 2,000 pounds medium grade Joplin sulphide ore, 60 per cent base, deduct the average of the quoted prices for such ore and $1.50 per ton of 2,000 pounds as representing the average freight on Joplin ores from Joplin, Mo., to common Kansas smelting points.

(*b*) For nonsulphide ores the treatment charge will be ascertained as follows: From the value of the recoverable spelter in a ton of 2,000 pounds of 40 per cent calamine ore deduct the average of the quoted prices for such ore and $1.50 per ton of 2,000 pounds as representing the average freight paid from Joplin, Mo., to common Kansas smelting points.

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(5) *Penalties.*—On iron ore deduct penalties as follows: $1 on each unit of iron in excess of 1 per cent up to and including 6 per cent; $0.50 per unit on each unit of iron in excess of 6 per cent up to and including 12 per cent; $0.25 for each unit of iron in excess of 12 per cent.

(6) The average market price of Joplin zinc ore and prime western spelter to be taken in accordance with quotations contained in the Engineering and Mining Journal for the calendar week, including the date of the sailing of the ship or day the car leaves the foreign country.

(7) Recoverable spelter, wherever that term is used in this memorandum, means for sulphide ores the assay minus eight units, and for nonsulphide ores the assay minus six units.

EXAMPLE.—*Sulphide ore.*

Assume: Assay 48 per cent zinc, 6 per cent lead, 14 per cent iron; freight, mine to smelter, $13 per ton of 2,000 pounds; insurance, $0.50 per ton; loading and expenses, $1 per ton; prime western spelter, 15 cents per pound; medium grade Joplin ore, 60 per cent base, $100 per ton.

48% − 8% = 40% × 2,000 lbs. = 800 lbs. @ 15¢			$120.00
Deductions:			
Freight, mine to smelter	$13.00		
Insurance	.50		
Loading and expense	1.00		
		$14.50	
Penalties:			
14% − 1% = 13%.			
5% @ $1.00	5.00		
6% @ .50	3.00		
2% @ .25	.50		
		8.50	
Treatment:			
60% − 8% = 52% × 2,000 = 1,040 @ 15¢	156.00		
Ore quotation	$100.00		
Freight to smelter	1.50		
	101.50		
		54.50	
Lead, 2.000 lbs. × 6% = 120 lbs., @ ¾¢		.90	
			78.40
			41.60

$41.60 + $1.10 = $37.82 dutiable value.

EXAMPLE.—*Nonsulphide ore.*

Assume: Assay 36 per cent zinc, 3 per cent lead, 2 per cent iron; freight, mine to smelter, $10 per ton of 2,000 pounds; export duty, $1; prime western spelter, 15 cents per pound; Joplin calamine, 40 per cent base, $50 per ton.

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36%−6%=30%×2,000 lbs.=600 lbs., @ 15¢				$90.00
Deductions:				
Freight, mine to smelter	$10.00			
Export duty	1.00			
			$11.00	
Iron penalty, 2%−1%=1% @ $1.00			1.00	
Treatment:				
40%−6%=34%×2,000 lbs.=680 lbs., @ 15¢		$102.00		
Ore quotation	$50.00			
Freight to smelter	1.50			
		51.50		
			50.50	
Lead duty (not over 3%, no duty)			.....	
				62.50
				27.50

$27.50+$1.10=$25 dutiable value.

Owing to the fact that the several factors necessary to determine the market value or purchase price of zinc ores are usually not known at the time of shipment, and importers can not ascertain the value of the zinc in the ore, collectors are authorized to permit entry by appraisement of zinc-bearing ores.

(101088.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36447.)

Common carrier.

Rebonding of American Express Co. as a common carrier for the transportation of dutiable merchandise and for the lading and unlading of such merchandise under the act of February 13, 1911.

TREASURY DEPARTMENT, *June 3, 1916.*

SIR: The department has received your letter of the 23d ultimo, with which was inclosed a bond in duplicate of the American Express Co. as a common carrier for the transportation of merchandise under sections 3000, 3001, 3005, and 3006, Revised Statutes, and the act of June 10, 1880, and all acts supplemental thereto relating to the transportation of unappraised merchandise in bond and the lading and unlading of dutiable goods under the act of February 13, 1911, said bond being in lieu of that of the company named, approved October 1, 1910, copy of which is on file in your office.

The new bond is approved and a copy thereof is herewith inclosed to be placed upon your files. You should note the fact and date of rebonding upon the copy of the bond now in your possession and retain the same without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(18583.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36448.)

Change in values.

New prices should be put into effect as shown that sales have been made or deliveries effected at the changed prices.

TREASURY DEPARTMENT, *June 3, 1916.*

To appraisers of merchandise and others concerned:

It appears from a discussion at the appraisers' conference that there is a lack of uniformity in appraising merchandise of which notice of a change in value has been received. Some appraising officers apply the new price on all shipments made after the change of price, and others wait until they have evidence of deliveries at the new price either in the country of exportation or the United States.

It further appears that there are two classes of merchandise, viz, one which may be termed stock goods which are ready for delivery at all times, and the other goods which are manufactured on orders for future delivery.

As to the first class, the department is of the opinion that the new price should be put into effect on all purchases made after the date on which the new price is to take effect, but that as to purchases made before that date and not shipped until after the new price becomes effective the new price should not be applied unless there is evidence that sales have been made at the new price.

With respect to the second class, the new price should be applied to old contracts only when there is evidence that deliveries have begun at the new price. When the appraising officer has no information as to whether sales have been made or delivery begun at a changed price, he should withhold appraisement until he can secure information on the subject.

(95760–4.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36449.)

Drawback on shoe topping.

Drawback on shoe topping manufactured by the Bradford Dyeing Association, of Bradford, R. I., and the Windram Manufacturing Co. and the Peters Manufacturing Co., of Boston, Mass., with the use of imported fabrics, for the account of the Seamans & Cobb Co., of Boston, Mass.—T. D. 31577 of May 4, 1911, revoked.

TREASURY DEPARTMENT, *June 3, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on shoe topping manufactured for the account of the Seamans & Cobb Co., of Boston, Mass., by the Windram Manufacturing Co. and the Peters Manufacturing Co., of Boston, Mass., with the use of imported fabrics either in the condition in which imported or after the same have been dyed by the Bradford Dyeing Association (U. S. A.), of Bradford, R. I.

Each piece of imported fabric used in the manufacture of shoe topping for their account shall be given a piece number by the Seamans & Cobb Co. and a record of the same shall be kept by the said company in the manner described in their sworn statement, dated May 17, 1916, transmitted herewith, showing the kind and yardage of cloth in the piece and the import data relating thereto. Each piece of cloth shall be tagged with its piece number and the piece shall be designated thereby in the records of the dyer and manufacturer.

The records of the Bradford Dyeing Association shall show, in the case of each piece of fabric dyed for the account of the Seamans & Cobb Co., in addition to the piece number, the yardage thereof, both before and after dyeing, the date of receipt, to whom delivered, and the date of delivery. Each piece of shoe-topping cloth manufactured by the Windram Manufacturing Co. and the Peters Manufacturing Co. shall be given a piece number and a record of the same shall be kept, showing the date of manufacture, the length and width thereof, the piece number or numbers of imported fabrics used in its manufacture, the quantity of imported fabric appearing therein, the quantity of waste resulting, the value of such waste, if any, and the disposition made of the finished shoe topping, including to whom shipped and the date of shipment. Sworn abstracts from the above records shall be filed with the drawback claim.

The allowance shall not exceed the quantity of imported fabric used in the manufacture of the exported shoe topping, as shown by the abstracts from the records provided for above, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

The sworn statements of the Bradford Dyeing Association, the Windram Manufacturing Co., and the Peters Manufacturing Co., dated April 1 and 20, and May 3, 1916, respectively, are transmitted herewith for filing in your office.

T. D. 31577 of May 4, 1911, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(86182.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36450—G. A. 7914.)

Indigoids—Dyes obtained from indigo.

Thioindigo red, thioindigo scarlet, and thioindigo pink, synthetic compounds containing the characteristic chromophoric group of indigo, are in a tariff sense obtained from indigo within the meaning of paragraph 514, act of 1913, and are, therefore, free of duty, although by improved methods of manufacture they are made directly, synthetically, without conversion into indigo itself.

United States General Appraisers, New York, May 31, 1916.

In the matter of protests 746895, etc., of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Strauss & Hedges (*John Francis Strauss* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence* and *Charles O. Baese*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* The merchandise here was classified as "coal-tar colors or dyes, not specially provided for," under paragraph 20, act of 1913, at 30 per cent. It is claimed to be free under paragraph 394, reading—

394. Alizarin, natural or synthetic, and dyes obtained from alizarin, anthracene, and carbazol.

Or under paragraph 514, reading—

514. Indigo, natural or synthetic, dry or suspended in water, and dyes obtained from indigo.

Other claims are made under paragraph 63 at 20 per cent and paragraph 21 at 15 per cent. The claim relied on, however, is the one under paragraph 514.

At the trial, counsel for the Government objected to the validity of protests 750192 and 749463, on the ground that the fee had not been paid. On this question the record in protest 737487 was incorporated by consent of counsel. Following the decision of the boarp on that protest, G. A. 7641 (T. D. 34927), and also G. A. 7640 (T. D. 34926), involving the same issue, we hold the protests in question are valid.

A chemist for the importing firm, who was particularly well qualified as a witness acquainted with the dyeing of textiles and with indigo and its derivatives, and dyestuffs imported by his firm, testified that the merchandise described as indigo in paste, thioindigo pink 247 paste, thioindigo red B paste, thioindigo scarlet, 6086 powder, and thioindigo red 970 paste, these articles ran uniform as imported under any one of those particular descriptions; that the samples (admitted in evidence) marked with labels describing the merchandise as invoiced, represented all the forms of that class of

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merchandise. As to their composition or derivation, he stated that the indigo in these dyestuffs was in modified form, and when asked, "What do you mean by saying the indigo is in a modified form?" he answered:

I mean by that that they can be made from indigo, that their chemical constituents are very similar. In these articles, however, the N H molecule has been replaced principally by one sulphur molecule, they have an extra sulphur molecule.

He gave the chemical formulas of each of the articles in question and also of indigo, and the paper showing these formulas was admitted and marked collective Exhibit 2. He further testified:

Q. Will you take collective Exhibit 2, Mr. Genssler, and explain how the indigo in paste, of which you have the formula there, differs in chemical constitution from indigo?—A. Indigo paste is made four to six atoms of hydrogen with sulphur.

* * * * * * *

Q. Take the next color, indigo red B, how does that differ?—A. The two N H atoms are replaced by two atoms of sulphur.

Q. (By General Appraiser BROWN.) What atoms are?—A. The two nitrogen hydrogen group are replaced by sulphur.

Q. What is that group, has it a name?—A. Amido (imino) group.

Q. Take the thioindigo red 970, how does that differ?—A. It is in the same way; that is the two N H atoms are replaced by sulphur and at the same time two hydrogens are replaced by the CH_3 group, called methyl group, and at the same time two hydrogen groups are replaced by chlorine.

Q. How does that thioindigo pink 247 differ?—A. Two N H groups are replaced by sulphur.

Q. Those are the amido groups?—A. Yes; and two hydrogen groups are replaced by the methyl group, and two hydrogens are replaced by bromine.

Q. How does the thioindigo scarlet differ from indigo?—A. By replacing on one end of the molecule, by replacing one amido group with sulphur, and the other group of indigo is indicated in the other half.

Q. The other half is indigo?—A. Yes; in other words, the entire indigo scarlet is half indigo.

Further, that these colors could be made from the material indigo, but in practice they are not so made; that indigo paste can be commercially obtained from indigo; that it is not commercially practicable to make the other four dyes from indigo, although they can be made from indigo direct, but it is more expensive; that the basis of indigo and the basis of these dyes is naphthalene, a coal-tar derivative; that the article marked brominated indigo is the same as in the case of Klipstein *v.* United States (4 Ct. Cust. Appls., 510; T. D. 33936).

Q. What is the common method of converting naphthylene into indigo?—A. From naphthalene the first step is that tannic acid is made by oxidation and that is converted into anthranil acid; this anthranil acid is treated with glycolic acid, and so phenol glycolic acid is made, and this is treated with caustic soda, and so you get indoxil, and this is oxidized to indigo.

Q. If you will take the same naphthalene, and your object was to produce any of the colors mentioned here except the indigo in paste, which of the processes as given,

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which you have outlined, would be eliminated?—A. The last two processes I mentioned.

Q. They would be eliminated?—A. The method is the same until anthranil acid is made.

As to the merchandise described as indigo in paste or brominated indigo, the record shows that it is brominated indigo, the same as the indigo paste the subject of Klipstein *v.* United States (4 Ct. Cust. Appls., 510; T. D. 33936), wherein the merchandise (a brominated derivative of indigo) was held dutiable as indigo paste under paragraph 25, act of 1909.

As to the other articles in question, the contention of the Government is that the expression in paragraph 514 of the act of 1913, "dyes obtained from indigo," refers only to dyes obtained directly from the material indigo. While the counsel for the protestant contends that the phrase is not so limited, but includes dyes like those in question made from the same base as indigo, the process resulting in a compound of indigo showing the indigo molecule slightly modified.

The changes in the provisions for indigo in the act of 1913 should be noted. The act of 1909 provided in paragraph 25 for—

25. Indigo extracts or pastes, * * * indigo, carmined. * * *

The act of 1913 provides, in paragraph 514 of the free list, for—

514. Indigo, natural or synthetic, dry or suspended in water, and dyes obtained from indigo.

In the Klipstein case the history of the legislative provisions for indigo was thoroughly reviewed, also the classification of indigo under various tariff acts.

The dyes in question are substantially and chemically dyes obtained from indigo, having the same or substantially the same chemical constituents as dyes obtained from the substance indigo, although they are, in fact, manufactured from naphthalene, which is also the basis of indigo. In other words, the product is the same as if it had been made from indigo, and the tariff levies duties on products or results of manufacturing processes rather than on methods of producing them.

Although in the preparation of these dyes two steps in the process of producing indigo and then breaking it down are omitted, the nomenclature of the subject shows that they are in the same class as indigo dyes. For instance, Thorpe's Dictionary of Applied Chemistry (Vol. III, p. 127) treats them under the same general head, to wit, "Indigo, artificial and indigoid dyestuffs," and on page 130, says:

Indigoids.—The congeners of indigo may be divided into two different classes. One of them contains the true derivatives of indigo, in which one or more of the 8 hydrogen atoms of the two phenylene groups are replaced by other constitutents; the other embraces substances which are strictly analogous to indigo in their constitution, but different from it in the construction of the complex connecting the

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two phenylene groups, which in this case as well as in that of indigo may have their hydrogen atoms replaced by other constituents. An enormous variety of new dyestuffs may thus be synthesized, all of which contain the characteristic chromophoric group of indigo: $-CO-C=C-CO-$.

And again, on page 131:

If the imino groups are to be shifted or to be exchanged for other complexes, this can not be done by starting from ready-formed indigo. The new dyestuff has to be built up synthetically. According to the synthetical methods adopted, we can obtain indigoids of either symmetrical or asymmetrical constitution.

And then follow descriptions of some of the various substances here in dispute, to wit, thioindigo red, treated generally as an indigo derivative, although derived synthetically; and thioindigo scarlet, and closing with this general paragraph:

Both thioindigo red and scarlet yield many new dyestuffs by the substitution of halogens and other substitutents for hydrogen in their phenylene groups. They dye various shades of scarlets, bluish reds, and reddish violets, and several of them have come into use as serviceable vat dyes.

See also Encyclopedia Britannica (Vol. XIV, p. 485, etc.).

In any proper commercial sense these articles, whether derived directly or through the indigo formula, are all of the same general character and composition, and are used for the same purposes.

Moreover, their effectiveness as dyes is undoubtedly due to the portion of the indigo molecule contained in their structure. In a strict chemical sense they are compounds of indigo, and therefore chemical derivatives of indigo.

We would then be treating Congress as if it were making a very close and fine scientific distinction, if we should hold, as contended by the Government, that the indigoids directly produced from indigo should fall into a different class from those which are formed directly without technically going through the step which includes the indigo formula, although the characteristic "color" group of indigo ($-CO-C=C-CO-$) remains throughout. It is also clear that the change of expression in the act of 1913 was plainly intended to broaden rather than to narrow or limit the indigo-dye provision.

We therefore hold that paragraph 514 was not only designed to include synthetic indigo itself, but also derivatives of indigo made directly by synthesis, whether or not the intervening steps included at some stage the technical formula for indigo. No reason can be imagined why the Congress should have intended to tax an indigoid because at no stage in its process of manufacture the technical formula of indigo appeared and then disintegrated and to leave the same substance free if such formula did so appear.

In other words, we have here substances chemically based in their construction upon the technical formula of indigo. If manufactured by replacing certain atoms of the indigo formula by sulphur or

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bromine, etc., they would be techincally obtained from indigo, and we hold that they are likewise free of duty if their chemical formula is the same, although synthetic products produced directly.

The protests are therefore sustained.

(T. D. 36451—G. A. 7915.)

Enlarging cameras—Submission on the record—What constitutes the record.

1. In a protest "submitted on the record" the record consists of the protest and all papers relating thereto filed up to the time of the payment of the filing fee of $1, at which time the jurisdiction of the collector ceases and that of the board attaches.

2. An appraiser's report made subsequent to the time of the payment of such filing fee is extra-official, and can not be considered a part of the record, unless offered and received in evidence at the hearing.

3. Enlarging cameras are dutiable under the provision for photographic cameras in paragraph 380, rather than as optical instruments under paragraph 93, act of 1913.

United States General Appraisers, New York, May 13, 1916.

In the matter of protest 774201 of Davies, Turner & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Importers not represented by counsel.

Bert Hanson, Assistant Attorney General, for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Brown, G. A., not participating; McClelland, G. A., concurring).

Sullivan, *General Appraiser:* The merchandise is described in the protest as "cameras," is invoiced as "1 upright enlarging apparatus," and appears on the entry as "one case photographic camera." It was assessed with duty under paragraph 93 of the tariff act of 1913, which provides for "optical instruments and frames and mountings for the same" at 35 per cent ad valorem. The protest states:

We claim and insist that these goods are dutiable under paragraph 380 of the tariff act of October, 1913.

No rate is mentioned in the protest, and while more than one article is covered by paragraph 380, yet, if the description on the entry is correct, and a photographic camera is the subject of the protest, in view of the fact that "photographic cameras, and parts thereof, not specially provided for" are specifically mentioned in this paragraph, and a rate of duty of 15 per cent ad valorem provided therefor, we think the protest is sufficiently definite.

This, however, is not the question that is troubling us.

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At the hearing on April 5, 1915, the cause was submitted on the record. The question is, What is the record in this case?

The facts are these: On the invoice appears the words, "1 upright enlarging apparatus." There is also written thereon in red ink "Opt. inst., 35 %." Liquidation occurred on November 4, 1914, and protest filed November 16, 1914. The appraiser's report is dated January 25, 1915. The protest with collector's indorsement of transmittal thereon, entry and invoice, and the appraiser's report made more than 30 days after filing of protest, constitute all the papers in this case.

Then is presented the question, When was the appeal perfected, and when did the collector's jurisdiction cease and that of this board become operative?

Paragraph N of section 3 of the present tariff act provides that the decision of the collector as to the rate and amount of duties shall be final and conclusive against all persons, unless within 30 days after, but not before, ascertainment and liquidation of the duties, the owner, importer, consignee, or agent of such merchandise shall file a protest in writing with the collector setting forth his reasons why his action should not be sustained. Thirty days are given after ascertainment and liquidation to file the protest. This may or may not be the perfecting of an appeal, but the statute further provides that the appeal shall be deemed abandoned unless within 30 days from the date of the filing of the protest the person who filed such notice of protest shall have deposited with the collector of customs a fee of $1 with respect to such protest.

The protest for the first time calls the attention of the collector to the fact that in the opinion of the protestant he has committed an error; but something more is required to complete the appeal—namely, the payment of the fee of $1 within 30 days of the filing of the protest. Every element entering into the appeal is perfected when the fee of $1 is paid, and nothing further is demanded of the protestant.

Then the statute provides that upon such payment of duties, protest, and deposit of protest fee, the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of nine general appraisers for due assignment and determination, as provided by law. This is a clear and explicit declaration. *In other words, upon the payment of the fee, the protest being filed, the jurisdiction of the collector ceases* and that of the Board of General Appraisers attaches.

What was the record at the time the fee was paid? Whatever had been filed up to that date in our judgment became and constituted the record. Whatever took place thereafter was extra-official, and not part of the record.

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The statute prescribes a time for filing protest, and then gives an additional 30 days thereafter to the protestant in which to pay the fee. During that time he has the privilege of perfecting his appeal by payment of the fee or abandoning it by refusing to make such payment.

Whatever was filed at the time of perfecting the appeal constitutes the record. The authorities sustain this proposition.

In National Hat Pin Co. *v.* United States (5 Ct. Cust. Appls., 435; T. D. 34971) the court had before it this question under the act of 1909.

In that case the protest was received by the collector June 1, 1911, and on November 10, 1911, the appraiser made written answer to the protest. December 16, 1911, the collector forwarded the papers to the Board of General Appraisers, and in his report, referring to the answer of the appraiser, he stated the following:

> In view of said report, the protest appears partly valid, and this office stands ready to reliquidate accordingly if authorized by your board.

The board overruled the protest, holding that the record referred to in the appraiser's report not having been made a part of the record could not be considered, and there was no presumption of similarity of the merchandise.

Upon appeal to the Court of Customs Appeals, the court, finding the appraiser's report was made more than 30 days after the filing of the protest, held that such report was extra-official, without significance, and was not part of the record. The court said:

> Upon the coming in of the protest it was the duty of the collector to forward within 30 days the invoice and all the papers and exhibits connected therewith to the Board of General Appraisers unless he determined that the protest was well founded and proceeded to reliquidate. At the expiration of the 30 days the collector, unless he acceded to the protest, was without further jurisdiction in the matter as to the classification and assessment of the merchandise, and jurisdiction over those issues had attached to the board whether the papers in the case had or had not actually been forwarded to the board. United States *v.* Straus (5 Ct. Cust. Appls., 147; T. D. 34193).

This is a clear enunciation of the principle as to when jurisdiction of the board attaches and that of the collector ceases. Under the old law it ceased at the expiration of 30 days from the filing of the protest. Under the present, 30 days is given in which to pay a fee after the protest is filed. It will be admitted that during this period the protest was not within the jurisdiction of the Board of General Appraisers. The statute of 1909 did not provide for the payment of a protest fee as does the present act.

In Tower *v.* United States (6 Ct. Cust. Appls., 267; T. D. 35478) the court had the same question before it. The board had overruled a protest, and did not consider the appraiser's report, for the reason it

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was made more than 30 days after filing of the protest. In referring to this fact the court stated:

The board stated in its decision of the case that it would have held the foregoing reports of the appraiser to be sufficient to identify the merchandise under protest, and to require a reclassification of the same in accordance with other decisions of the board concerning similar merchandise, but that these reports had both been made more than 30 days after the filing of the protest in the case, and consequently could not be regarded as evidence tending to establish the identity of the merchandise in question.

In further elucidating the question of the validity of appraisers' reports made more than 30 days after filing the protest, the court said:

In the case of the United States *v.* Straus & Sons (5 Ct. Cust. Appls., 147; T. D. 34193) we held that under section 14 of the administrative act, as amended August 5, 1909, construed together with Customs Regulations of 1908 (art. 1073), it was the duty of the collector to forward to the board each unsustained protest within the period of 30 days after the filing of such protest, and that "once the 30 days have passed, whether the papers have been transmitted or not, the appeal is perfected, the jurisdiction of the Board of General Appraisers attaches, and the authority of the collector is suspended pending the decision of the appellate tribunal." In this connection we said: "Any other holding in this matter would simply mean that the collector of customs, by violating his duty and retaining the protest, could deprive the importer of a speedy adjudication of his appeal and impede the Board of General Appraisers in the exercise of the jurisdiction with which it is vested once the collector has failed to recognize the protest as just." * * * Accordingly it was held that the collector was thereby required to transmit each unsustained protest to the board within 30 days after the same was filed with him. This conclusion also implied that in event of the collector's failure to perform this duty the board's jurisdiction would nevertheless attach to the protest and the collector's jurisdiction thereover be suspended.

These two cases satisfactorily establish the rule that there is a time during which the jurisdiction of the collector attaches. Under the act of 1909 it was 30 days after the filing of the protest. Under the act of 1913 it is up to the time of the payment of the protest fee, which may be 30 days after the protest is filed, or it may be on the day of the filing of the protest. In either event, when the fee is paid the appeal is perfected, and the collector has no further interest in that case, except to transmit the papers to the Board of General Appraisers. He is without authority to reliquidate, even though he believes his action was wrong.

In the Customs Regulations for 1915 we find article 649, which provides for the transmission of protests and samples to the Board of General Appraisers. That rule states:

If the naval officer does not concur, or if the collector shall be of the opinion that the claim is not valid, one copy of the protest shall be transmitted to the Board of General Appraisers by the collector within 30 days, if practicable, after the receipt by him of the appriaser's special report, provided the fee has been deposited, and in case of a consumption entry, the duties have been paid.

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The vice in this article is in its direction to the collector to transmit the protest to the board within 30 days after the receipt of the appraiser's special report, for the reason that the collector is without power to hold the papers one day after the protest fee has been paid. There is no practicability about it; it is mandatory on him to forward the papers to the board. "Upon such payment of duties, protest, and *deposit of protest fee*" he shall transmit all papers, etc. (par. N, sec. 3, *supra*). He is without power to hold a protest for 30 days after the receipt by him of the appraiser's special report, or for any shorter period, or for any purpose after the appeal has been perfected by the payment of the fee.

Rules and regulations must be made in accordance with law. The statute in clear and definite terms prescribes the collector's duties and powers, as it does those of the board. It provides when the collector's jurisdiction ceases, as it does when that of the board attaches.

Therefore, with these authorities before us, and the clear and explicit words of the statute, the record in this case was that made up at the time the fee was paid. We are without information as to when that occurred, but we can safely arrive at a conclusion on that point.

The protest was filed November 16, 1914. Thirty days from that time was given within which to pay the fee and forward the papers to the board. The papers were not forwarded till February 6, 1915, considerably more than 30 days after filing the protest. If the fee in this case had not been paid until February 6, 1915, the protest would have been deemed abandoned nine weeks prior thereto. From the fact that it was not considered abandoned by the collector we can presume from the faith given to the acts of a public official that the fee was paid within 30 days from November 16, and therefore the protest had life; for the collector states: "The protest was lodged within the statutory time and the transmittal fee paid, as required by paragraph N, section 3, act of October 3, 1913." If it was paid on or before December 16, 1914, the protest had life. We therefore presume that the jurisdiction of the board attached to this case on or before December 16, 1914. It therefore follows that on January 25, 1915, the date of the appraiser's report, the collector had ceased to have jurisdiction, and that of the board attached to this case, notwithstanding the protest had not been forwarded to it. Therefore, we eliminate any consideration of the appraiser's report.

In re protest 747409 of Francois Coste, G. A. 7837 (T. D. 36046), this board held that an appraiser's report, although made more than 30 days after the filing of the protest, if it was offered in evidence, and objection not made thereto, became part of the record; and that a submission on the appraiser's report, no objection being made to

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the submission thereon, was tantamount to the offer and receipt of the appraiser's report in evidence.

In the case at bar, it was not offered in evidence, but the case was submitted on the record. As we have shown, the appraiser's report in this case was not part of the record. Therefore it can not be considered, and is of no force or effect.

Unquestionably the entry and invoice were part of the record at the time of the filing of the protest and the payment of the fee. Therefore, the record consists of the protest, the entry, and the invoice. Is there sufficient in this record to justify the board in passing on the facts? We think there is.

Paragraph 93, among other things, covers "optical instruments and frames and mountings for the same."

We have heretofore held, *In re* Bliss's protest 752181, G. A. 7697 (T. D. 35220), affirmed in United States *v.* Bliss (6 Ct. Cust. Appls., 433; T. D. 35980), that "an optical instrument is related in some manner to the science of optics, and is peculiarly and especially related to vision—to doing something to protect or assist in more perfect sight."

The case at bar having been submitted on the record in open court, the Government not objecting, we take it that the statements in the record are true. The protest declaring this merchandise to be cameras, the invoice describing it as "enlarging apparatus," and the entry as a photographic camera, constituting the record, lead us to the opinion that this merchandise is not an optical instrument within the terms of the statute and our decision in the Bliss case, *supra.* Paragraph 380 provides *eo nomine* for photographic cameras, and parts thereof. In view of the descriptions of this merchandise, we think it more aptly classified under this paragraph than under paragraph 93. (See *In re* protest 763994 of American Express Co., Abstract 39771, on enlarging cameras.) Certainly this merchandise, even under the somewhat indefinite descriptions of it in the record, could not be classified as optical instruments, when there is an *eo nomine* provision for "photographic cameras, and parts thereof" in the statute.

On the facts disclosed we sustain the protest, and reverse the collector's decision.

CONCURRING OPINION.

McCLELLAND, *General Appraiser:* I concur in the conclusion reached by my associate, Judge Sullivan, which sustains the protest and reverses the decision of the collector, but I do not agree with his reasoning, or the conclusion based thereon, wherein he decides that, upon the facts as stated, the special report of the appraiser is not a part of the record upon which the protest was submitted for decision.

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It is not to be disputed that the official papers before the board at the time of such submission for decision consisted of the protest, invoice, entry, and the appraiser's special report on the protest. The protest bore the following indorsement by the collector:

NEW YORK, *February 6, 1915.*

Respectfully referred to the Board of General Appraisers.

The merchandise referred to herein was assessed with duty in accordance with the advisory classification returned by the appraiser on the invoice, and more particularly described in the special report herewith.

The protest was lodged within the statutory time and the transmittal fee paid, as required by paragraph N of section 3, act of October 3, 1913.

DUDLEY FIELD MALONE, *Collector.*

Whether the said special report of the appraiser was dated before or after the payment of the protest fee I think is of no consequence. In my concurring opinion in G. A. 7837 (T. D. 36046), I said:

The statute contains no provision for a special report on the protest by the United States appraiser, but the collector, in harmony with a long-continued practice, transmits each protest to that officer for such report, which is usually more detailed than the return on the invoice.

It is to be observed that the collector in the indorsement quoted above said:

The merchandise referred to herein was assessed with duty in accordance with the advisory return by the appraiser on the invoice and *more particularly described in the special report herewith.*

Such special report is nothing more nor less than an amplification of the appraiser's advisory classification noted on the invoice. There is nothing in the record to show whether the request of the collector for the special report of the appraiser was made before the fee was paid or after such payment, but I think it wholly immaterial which was the fact.

I am not prepared to disagree with Judge Sullivan's view of the law wherein he holds that upon the payment of the protest fee the collector's jurisdiction over the issue raised by the protest ceases and the board's jurisdiction attaches, but I can not see that it is at all inconsistent with that view to still hold that the appraiser's special report, received by the collector subsequent to the payment of the protest fee and transmitted by him as a part of a statement of his own action assessing duty, and the basis for such action, is part of the official record presented to the board. The indorsement upon the papers indicates that when the case was regularly called for trial it was formally submitted for decision on the record. It may safely be presumed that such submission was made by protestants, but the absence of any indication on the papers of objections having been made to such submission on the part of the Government warrants the assumption that such submission was made by consent, and it is

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my view that since the submission was made on the record as it was before the board such record must be held to include all of the official papers transmitted by the collector, the submission upon which was acquiesced in by the Government.

(T. D. 36452—G. A. 7916.)

Tant iron—Iron in pigs.

Tant iron, a special variety of pig iron, is properly classifiable free of duty under the provision in paragraph 518, tariff act of 1913, for "iron in pigs," rather than dutiable at the rate of 15 per cent ad valorem under paragraph 102 as ferrosilicon.

United States General Appraisers, New York, June 2, 1916.

In the matter of protests 786996, etc., of John H. Faunce *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia.

[Reversed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty* and *Samuel Isenschmid*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER G. A., not participating).

FISCHER, *General Appraiser:* The merchandise in question consists of metal in the form of pigs. The Government contends it is ferrosilicon, while the importers claim it is iron in pigs of the particular variety known as tant iron. Duty was levied thereon at the rate of 15 per cent ad valorem under the following provisions of paragraph 102 of the act of 1913:

102. * * * Ferrosilicon, and other alloys used in the manufacture of steel, not specially provided for in this section, * * *.

Various claims are alleged in the protests, but the one upon which the importers apparently rely, as indicated by the statement of their counsel made at the hearing, is that the merchandise is properly entitled to free entry under the provision in paragraph 518 of said act for "iron in pigs."

The uncontradicted testimony offered on behalf of the importers shows that the merchandise is definitely, uniformly, and generally known and recognized in the trade and commerce of this country as a special form of pig iron; but inasmuch as the tariff provision herein invoked by the importers is descriptive and not denominative in character, the construction thereof is not necessarily controlled by commercial proof.

The provision for "iron in pigs" is similar in the legal effect to be given thereto to the provision found in paragraph 578 of said act for "platinum in wire" which was construed by the board in G. A. 7762 (T. D. 35627). In affirming the board's ruling, the Court of Customs

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Appeals, in the case of Bosch Magneto Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36310), speaking through De Vries, Judge, said:

> The board read the provisions of paragraph 578, as providing for a description of platinum in various forms, including the form of wire. * * * We think that the Congress did not intend to use the words "platinum * * * in * * * wire" in a commercial sense * * *.
>
> The phrase is a precise provision for a metal when found in a certain form. Such obviously is not a commercial but a descriptive term.

That ruling follows a long line of precedents involving this principle of tariff construction as enunciated by the United States Supreme Court, the United States Circuit Courts, the United States Court of Customs Appeals, and by this board, among which may be cited the cases of Habicht *v.* United States (2 Ct. Cust. Appls., 457; T. D. 32206), Talmage *v.* United States (77 Fed., 826), and others.

The proof submitted herein shows that the imported merchandise consists of a species of iron with high silicon content; that it is known as tant iron and not as ferrosilicon; that as imported it is in the form of pigs and measures from 18 to 20 inches in length and about 3½ to 4 inches in thickness; that pig iron varies in its chemical composition according to the specific requirements exacted by the purchaser; that it also varies in price from $12 to $30 per ton; that all pig iron contains silicon; that the silicon content in ordinary pig iron is from .025 to .3 per cent; that the silicon in the present merchandise averages 14.22 per cent, or a little more than 10 per cent above the amount found in ordinary pig iron.

It is further shown that in their respective uses ferrosilicon and pig iron differ in every essential particular, the former being used solely as an admixture with iron in the production of certain qualities and grades of steel, while the latter is melted in a furnace, as is any ordinary pig iron, and subsequently cast into sand molds to be made into completed articles ready for use; and that the tant iron in question is prepared for the special purpose of casting into bowls and like articles suitable for chemical uses, the silicon, manganese, and other constituents giving it the necessary power of resistance to fit it for those particular uses. In finishing the bowls, the castings are subjected to machinery processes, which is not possible with ferrosilicon, the latter being incapable of being wrought or made up into articles. The testimony on this point confirms the correctness of the ruling made in the case of United States *v.* Roessler (137 Fed., 770; T. D. 26127), wherein it was held that various ferros were not dutiable as metals unwrought because they were clearly incapable of being wrought.

Furthermore, it is established herein that ferrosilicon, by reason of the absence of appreciable quantities of manganese, is very brittle

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and therefore incapable of being manufactured into articles, and that its sole and only use is in the production of certain grades and qualities of steel by admixture.

The average manganese content of the three lots covered by these protests is 2½ per cent, while in ferrosilicon it is from 0.20 to 0.25 per cent. Moreover, ferrosilicon also contains very much smaller quantities of phosphorus, sulphur, and carbon than are found in the articles here under consideration.

Analyses made of the three shipments involved herein disclose the following constituents:

Steamship.	Silicon.	Sulphur.	Phosphorus.	Manganese.	Graphitic carbon.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
Scottish Monarch	14.85	0.037	0.057	2.43	0.74
Missouri	13.88	.050	.067	2.19	1.03
Crown Point	13.94	.054	.045	2.39	1.23

These elements in such quantities as here indicated are never found in ferrosilicon, and the presence thereof in the imported articles shows conclusively that the latter is neither commercially nor in fact ferrosilicon. Furthermore, it is shown that tant iron is a product of the blast furnace, as distinguished from ferrosilicon,which is a product of an electric furnace.

In the light of these facts we find that the merchandise here in question is not ferrosilicon, as classified by the collector, but is properly described as iron in pigs, as alleged in the protests. The claim set forth in said protests under paragraph 518 is therefore sustained in so far as it covers the particular articles hereinabove referred to; but in all other respects the protests are overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, MAY 31, 1916.

No. 39828.—Protests 793505, etc., of F. Weber & Co. (Philadelphia).

SLIDE RULES.—Small, flat, circular, slide rules similar in shape to a watch, each inclosed in a leather case, composed of glass, celluloid, and metal, metal chief value, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167 or as manufactures of pyroxylin at 40 per cent under paragraph 25.

Opinion by SULLIVAN, G. A. The articles in question are known as Halden calculex and slide rules, or as circular slide rules. They are used by engineers, and are

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sometimes carried on or about the person. On the authority of G. A. 7827 (T. D. 35971), G. A. 7824 (T. D. 35949), and Abstract 39074 they were held dutiable under paragraph 167, as claimed.

No. 39829.—Protest 783514 of C. F. Rumpp & Sons (Philadelphia).

SOAP BOXES OF GLASS AND METAL.—Soap boxes consisting of glass containers with metal covers, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as articles in chief value of glass at 45 per cent under paragraph 84, or as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. These soap boxes are used as parts of outfits for traveling cases. They are large enough to contain an ordinary sized cake of soap. Being composed in chief value of metal plated with gold, they were held dutiable at 50 per cent under paragraph 167. G. A. 7827 (T. D. 35971), G. A. 7824 (T. D. 35949) and G. A. 7794 (T. D. 35822) followed. Abstract 38550 distinguished, the articles being too large to be carried in the pocket or vanity case.

No. 39830.—Protest 783924 of Wm. Larzelere & Co. (Philadelphia).

BONE BROOCHES—JEWELRY.—Brooches composed of bone and metal, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of bone at 20 per cent under paragraph 368.

Opinion by SULLIVAN, G. A. The evidence not showing that the brooches in question are not jewelry, they were held properly classified under paragraph 356. United States *v.* Oberle (1 Ct. Cust. Appls., 527; T. D. 31545), Abstract 35224 (T. D. 34321), G. A. 7754 (T. D. 35591), Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198), and American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259) cited.

BEFORE BOARD 2, MAY 31, 1916.

No. 39831.—Protest 796881 of J. J. Gavin & Co. (New York).

STEEL HINGES, GOLD-PLATED.—Hinges of carved steel, some gold plated, classified at 50 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as finished hinges or hinge blanks at 10 per cent under paragraph 123.

Opinion by FISCHER, G. A. The eo nomine provision for hinges in paragraph 123 was held to more specifically apply to the merchandise in question. Protest sustained.

No. 39832.—Protest 793388 of B. Ulmann & Co. (New York).

COTTON CORD COVERED WITH METAL-COATED PAPER—GOLD THREAD.—Merchandise invoiced as gold thread, consisting of cotton cord covered with metal-coated paper, classified as manufactures of metal-coated paper at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed dutiable as a manufacture in chief value of cotton at 30 per cent under paragraph 266.

Opinion by FISCHER, G. A. From the analysis it was found that the gold thread in question is composed in chief value of metal-coated paper. It was held properly classified under paragraph 324.

No. 39833.—Protests 774836, etc., of Jules Racine & Co. et al. (New York).

TIMERS.—Timers classified as watches at 30 per cent ad valorem under paragraph 161, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the authority of G. A. 7827 (T. D. 35971), the timers in question were held dutiable under paragraph 167, as claimed. Protests sustained in part.

No. 39834.—Protests 762113, etc., of W. A. Brown & Co. et al. (New York).

SALTS OF ANTIMONY.—Salts of antimony classified under paragraph 144, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 5.

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Opinion by FISCHER, G. A. On the authority of Abstract 38660, affirmed in United States v. Innis (7 Ct. Cust. Appls., —; T. D. 36254), salts of antimony were held dutiable under paragraph 5, as claimed.

No. 39835.—Protest 797315-6223 of Geo. Borgfeldt & Co. (New Orleans).

NEEDLECASES.—Needle books in chief value of hand-sewing needles are claimed entitled to free entry under paragraph 555, tariff act of 1913.

Opinion by FISCHER, G. A. On the authority of Abstracts 37815 and 37902, covering similar merchandise, the needle books here in question were held free of duty under paragraph 555.

No. 39836.—Protest 798150 of Robert K. Morton (Boston).

WIRE-DRAWING MACHINES.—A wire-drawing machine classified at 20 per cent ad valorem under paragraph 167, tariff act of 1913, is claimed dutiable as a machine tool at 15 per cent under paragraph 165.

Opinion by FISCHER, G. A. The wire-drawing machine in question was held dutiable as a machine tool under paragraph 165. Abstract 39047 followed.

BEFORE BOARD 1, JUNE 2, 1916.

No. 39837.—Protest 794428 of A. C. Lombard's Sons (Boston).

FEATHERS, MANUFACTURED.—Merchandise classified as feathers, advanced, at 40 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed to be crude feathers dutiable at 20 per cent under the same paragraph.

Opinion by MCCLELLAND, G. A. It was found that the feathers in question have been stripped and crushed and therefore advanced or manufactured. They were held properly classified at 40 per cent under paragraph 347.

No. 39838.—Protest 800699-58950 of International Forwarding Co. (Chicago).

RUSCUS LEAVES.—Ruscus leaves classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 385.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 39274 the ruscus leaves in question were held dutiable as nonenumerated manufactured articles under paragraph 385.

BEFORE BOARD 2, JUNE 2, 1916.

No. 39839.—Protests 773145, etc., of National Ribbon Co. (New York).

VELVET RIBBONS.—Velvet ribbons classified as silk chief value at 50 per cent ad valorem under paragraph 314, tariff act of 1913, are claimed to be composed in chief value of cotton dutiable at 40 per cent under paragraph 257.

Opinion by HOWELL, G. A. It was found that the ribbons in question are composed chiefly of cotton. They were held dutiable under paragraph 257, as claimed.

No. 39840.—Protests 738602, etc., of Max Mandel (New York).

BEADED TRIMMINGS—PROTEST FEE.—Ornaments and trimmings classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as in chief value of beads or spangles at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. G. A. 7641 (T. D. 34927) followed as to protest fee. The goods composed in chief value of beads or spangles were held dutiable under paragraph 333, as claimed. Willenborg v. United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed. Protests sustained in part.

No. 39841.—Protest 782093 of Kaskel & Kaskel, and protests 783171, etc., of Kronfeld, Saunders & Co. et al. (New York).

WEARING APPAREL IN PART OF NETTING OR TUCKINGS.—Articles of wearing apparel in part of ornaments, braid, netting, or tuckings, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at various lower rates.

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Opinions by HOWELL, G. A. The articles found to be composed in chief value of cotton were held dutiable at 30 per cent under paragraph 256, those in chief value of wool at 35 per cent under paragraph 291, and silk chief value at 50 per cent under paragraph 317. United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), followed.

No. 39842.—Protest 756756–52757 of Marshall Field & Co. (Chicago).

WEARING APPAREL IN PART OF TRIMMINGS.—Wearing apparel classified as appliquéd or made in part of trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as silk wearing apparel at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. Silk garments made in part of trimming in the form of fringe, and others ornamented with beaded trimmings, silk chief value, the beads strung on a thread and then applied or sewed upon a garment in such a manner as to form a figure or design, were found not dutiable as appliquéd. They were held more specifically provided for as silk wearing apparel under paragraph 317 than as articles made wholly or in part of trimmings under paragraph 358. United States *v.* Hamburger (5 Ct. Cust. Appls., 217; T. D. 34382), Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464), and United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), followed.

(T. D. 36453.)

Imitation parchment paper.

STONE & CO. *v.* UNITED STATES (NO. 1628).

1. CONSTRUCTION—PARAGRAPHS 324 AND 326, TARIFF ACT OF 1913.

   Paragraph 324, tariff act of 1913, calling for certain kinds of paper, "by whatever names known," includes typewriter paper of such kinds and prevents it from being dutiable as typewriter paper under paragraph 326.

2. EVIDENCE—COLLECTOR'S CLASSIFICATION PRESUMPTIVELY CORRECT.

   There is not sufficient evidence in this record to overcome the presumed correctness of the collector's classification of the merchandise as imitation parchment paper under paragraph 324, tariff act of 1913, and not as typewriter paper under paragraph 326.

United States Court of Customs Appeals, May 23, 1916.

[Affirmed.]

Lester C. Childs for appellants.

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

[Oral argument April 27, 1916, by Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The importation in this case consists of paper. It was classified by the collector as imitation parchment paper under paragraph 324 of the act of 1913. The protest claims the assessment should be made under paragraph 326 and the importation classified as typewriter or imitation onionskin paper.

Paragraph 324 provides for "grease-proof and imitation parchment papers which have been supercalendered and rendered trans-

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parent or partially so, by whatever name known, all other grease-proof and imitation parchment papers, not specially provided for in this section, by whatever name known."

Paragraph 326 provides for "typewriter, and onionskin and imitation onionskin papers calendered or uncalendered."

Testimony was offered by the importers before the Board of General Appraisers, and the protest was overruled. On appeal the contention of the importers is that the board failed to follow the testimony adduced in the case. The decision of the board was as follows:

The proof offered is wholly insufficient to substantiate the claims alleged in the protest and does little more than to establish that the paper in question is principally used as a manifold paper. The fact that the importers' witness states that it might be called onionskin paper does not establish it as a fact.

The appellant in his brief says:

We will not take into consideration the question as to whether it is or is not onionskin paper, but we do insist that this testimony (previously quoted in the brief), which is that of a thoroughly competent witness and undisputed, specifically proves, in the first place, that it is a kind of paper, in the second place, that it is principally used in a typewriter and in connection with typewriting, and that therefore if it comes under any phase of the law it is under paragraph 326, which covers typewriter paper.

The testimony relied upon to prove this fact, which is quoted in the brief of counsel, is as follows:

Q. Do you know of your own knowledge what this particular paper is used for?—A. Used as a manifold paper typewriting back of a carbon to make manifold copies.

Q. Is that its principal use?—A. It is.

This testimony, as contended by the importers, clearly tends to show that the paper in its use is typewriter paper, but the two paragraphs present a contrast between the *eo nomine* designation of typewriter papers and "grease-proof and imitation parchment papers which have been supercalendered and rendered transparent or partially so, by whatever name known." It would seem to be an essential part of the importers' case, therefore, to exclude the papers in question from the language just quoted, for this language is comprehensive enough to include paper which might be known as typewriter paper. The importers started on the line of making this proof by their witness and asked these questions:

Q. Are you familiar with parchment paper and imitation parchment?—A. Yes.

Q. Are you familiar with typewriter paper?—A. Yes.

Q. With onionskin paper?—A. Yes.

Q. Do you know and can you tell the difference between parchment paper and imitation paper and the paper here in question?—A. Yes.

Q. How?—A. Apply the different tests, the grease test.

This is followed by a statement of the use of this paper as manifold paper typewriting back of a carbon to make manifold copies, and the question as to whether this paper is or is not an imitation parchment paper seems to have been dropped.

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It is quite possible that an imitation parchment paper may be generally used as a typewriter paper. But even so, in view of the broad provisions of paragraph 324, it would be dutiable thereunder.

We can gather from an inspection of the samples no information which justifies us in reversing the conclusion of the board. The paper, so far as we can judge, appears to be partially grease proof. The characteristics of imitation parchment paper are discussed in Germania Importing Co. *v.* United States (4 Ct. Cust. Appls., 29; T. D. 33221).

The decision of the board is *affirmed.*

(T. D. 36454.)

Pedometers.

UNITED STATES *v.* SUSSFELD, LORSCH & CO. (No. 1695).

PEDOMETERS, HOW DUTIABLE—NOT EJUSDEM GENERIS WITH ARTICLES NAMED IN THIRD CLAUSE, PARAGRAPH 356, TARIFF ACT OF 1913.

Pedometers having a catch by which they are attached to the vest pocket, used principally by practical people for utilitarian purposes, are not like the articles named in the third clause of paragraph 356, tariff act of 1913. They are not dutiable under paragraph 356, but as metal articles not specially provided for under paragraph 167.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39343.

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Curie, Smith & Maxwell (*Thomas M. Lane* of counsel) for the appellees.

[Oral argument May 18, 1916, by Mr. Lawrence and Mr. Lane.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise in this case consists of pedometers assessed for duty under paragraph 356 of the act of 1913, claimed to be dutiable at 20 per cent ad valorem under paragraph 167 of the same act. The board sustained the protest making such claim, and the Government appeals.

The pertinent provisions of paragraph 356, which the Government invokes, read as follows:

* * * Articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, cardcases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof finished or partly finished composed of metal, * * *.

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The provisions of paragraph 167 are as follows:

Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

The record shows that the pedometers in question are instruments resembling watches, having a little catch attached by which they are fastened to the vest pocket. They are used to indicate the distance walked by the person carrying them. The testimony shows that they are used principally by the employees of railroad or telephone companies in laying out posts or by land companies in measuring plots of land. It is shown that the jar of the step operates the recording mechanism. The retail price ranges from $2.50 to $6. It is shown that the larger proportion of this merchandise is used by practical people for utilitarian purposes in measuring the distance walked.

It is urged by the importers, and this view appears to have been adopted by the board, that these pedometers are not, under the rule of *ejusdem generis*, such as or like the articles *eo nomine* named in paragraph 356. We think no error was committed in adopting this view.

The question of the application of the *ejusdem generis* rule was fully considered by the court in Gallagher & Ascher *et al. v.* United States (6 Ct. Cust. Appls., 105; T. D. 35343), which considered "prorepel" lead pencils. In that case the court, speaking through Martin, Judge, said:

The controlling question in this provision, outside of the question of value and material, seems to be whether the articles in question are designed to be worn on apparel or carried on or about or attached to the person in the same manner as are the enumerated articles and like articles when in their customary use. If the assessed articles do not resemble the enumerated ones in that particular, then they would not fall within the present provision, whatever might be their resemblance to the exemplar articles or some of them in any other particular. On the other hand, if the assessed articles are similar to the prescribed exemplars in respect to the manner in which they are worn or customarily carried upon the person, then the resemblance is sufficient to satisfy the terms of the provision. * * *

It may be observed that the articles which are enumerated in the disputed provision are numerous and in some respects diverse. Some of them are wholly ornamental in character, for example, "vanity cases" and "millinery ornaments"; some are wholly utilitarian, for example, "cigar cutters" and "match boxes"; some may be both ornamental and useful, for example, "chains" and "cuff buttons." In one particular, however, they are all alike, and that is that in their customary use they are all carried upon the person of the user, not for warmth or protection, like clothing, but rather as incidental articles of mere personal comfort, convenience, or adornment.

The articles here involved are not articles which in any proper sense can be termed articles of mere personal comfort, convenience,

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or adornment. They are vocational instruments and not "such as" or "like" the articles enumerated.

The suggestion made at the argument that these articles might be treated as surveyors' instruments is without merit.

The suggestion was also made at the hearing that the evidence failed to show that these articles were not plated with gold or silver. Apparently the board, who examined the samples, saw no reason to suspect that they were so plated, and we discover nothing in the appearance of the articles which leads us to doubt the correctness of the board's conclusion in that respect.

The decision of the board is *affirmed*.

(T. D. 36455.)

Tea sweepings.

SCHAEFER ALKALOID WORKS *v.* UNITED STATES (No. 1624).

TEA SWEEPINGS MIXED WITH LIME AND ASAFETIDA, HOW DUTIABLE.

Tea sweepings, when mixed with lime and asafetida to make them unfit for beverage use, imported for making caffeine, have not ceased to be tea sweepings. The mixture is not classifiable as a drug under either paragraph 27 or 477, tariff act of 1913: as waste not specially provided for, under paragraph 384; or as a nonenumerated article under paragraph 385. Whether or not the merchandise may be considered as segregable mixed goods is not decided; but, in the absence of any such claim or evidence by which segregation might be made, its classification as tea sweepings under paragraph 13 is affirmed.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7726 (T. D. 35417).

[Affirmed.]

Walden & Webster (*Henry J. Webster* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Frank P. Wilson*, special attorney, of counsel), for the United States.

[Oral argument February 16, 1916, by Mr. Webster and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Tea sweepings mixed with a percentage of lime and asafetida apparently for the purpose of preventing their consumption as tea were classified by the collector of customs at the port of New York as tea sweepings. The goods were accordingly assessed for duty at 1 cent per pound under the provisions of paragraph 13 of the tariff act of 1913, which paragraph reads as follows:

13. Caffein, $1 per pound; compounds of caffein, 25 per centum ad valorem: impure tea, tea waste, tea siftings or sweepings, for manufacturing purposes in bond, pursuant to the provisions of the act of May sixteenth, nineteen hundred and eight, 1 cent per pound.

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The importers protested that the goods were not tea sweepings, and claimed that they were free of duty as a crude drug under paragraph 477, or dutiable as a drug advanced in value or condition under paragraph 27, or as waste under paragraph 384, or as a nonenumerated article under paragraph 385. The importers further claimed in their protest that if the goods were classifiable as tea sweepings duty should be assessed on the weight thereof, minus the weight of the lime. The provisions of the tariff act on which the importers relied in their protest are as follows:

477. Drugs, such as barks, beans, berries, buds, bulbs, bulbous roots, excrescences, fruits, flowers, dried fibers, dried insects, grains, gums, gum resin, herbs, leaves, lichens, mosses, logs, roots, stems, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds; any of the foregoing which are natural and uncompounded drugs and not edible and not specially provided for in this section, and are in a crude state, not advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture: *Provided*, That no article containing alcohol shall be admitted free of duty under this paragraph.

27. Drugs, such as barks, beans, berries, buds, bulbs, bulbous roots, excrescences, fruits, flowers, dried fibers, dried insects, grains, gums, herbs, leaves, lichens, mosses, roots, stems, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, and weeds; any of the foregoing which are natural and uncompounded drugs and not edible, and not specially provided for in this section, but which are advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture, 10 per centum ad valorem: *Provided*, That no article containing alcohol shall be classified for duty under this paragraph.

384. Waste, not specially provided for in this section, 10 per centum ad valorem.

385. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles not enumerated or provided for in this section, a duty of 10 per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of 15 per centum ad valorem.

The Board of General Appraisers overruled the protest and the importers appealed.

It appears from the record that the merchandise is tea sweepings which have been denatured by mixing them with lime and asafetida in accordance with regulations prescribed by the British Government. As to the proportions of lime and asafetida required to be added to the sweepings by such regulations, Eugene Schaefer, a witness for the importers, testified as follows:

Q. What is the quantity of lime and asafetida that the British Government requires?—A. Ten per cent lime per mill per thousand and asafetida 1 per thousand.

Q. One part in a thousand of asafetida?—A. Yes, sir.

The evidence is undisputed that merchandise of the kind imported is used for the manufacture of caffein.

The contention of the importers that the goods are not dutiable as assessed is based entirely on the theory that the addition of a

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small percentage of lime and asafetida to tea sweepings destroys their distinctive character as such and brings into being a new product which is not tea sweepings. We do not think that the evidence in the record, considered in conjunction with the history of the legislation, warrants us in reaching that conclusion. The act of Congress of March 2, 1897, made it unlawful for any person or corporation to import into the United States any merchandise as tea which was inferior to prescribed standards of purity, quality, and fitness for consumption. By the terms of that act importations of tea were required to be examined and if found within the prohibition it was made obligatory upon the importer to export the same out of the limits of the United States within a period of six months after final reexamination, and if not so exported the collector was required to destroy the goods. On August 12, 1897, some six months after the passage of that act, the Treasury Department ruled that low-grade tea and tea dust imported for the purpose of manufacturing caffeine and not as tea should be admitted to entry provided the same was marked as a drug and mixed with slack lime and asafetida in the proportion of 100 parts of slack lime and 1 part of powdered asafetida to 1,000 parts of tea. The ruling was in effect a declaration that low-grade tea and tea dust could not be regarded as tea and, of course, were within the prohibition of the statute. The mixture prescribed by the statute was practically identical with that here involved and was clearly designed not to produce a new article with a new name and a new use but to make impossible the unlawful use of rejected teas and thus compel their assignment to the purpose for which they might be properly employed. The act of March 2, 1897, was amended on May 16, 1908, by adding at the end thereof a proviso, which is as follows:

Provided, That nothing herein shall affect or prevent the importation into the United States, under such regulations as the Secretary of the Treasury may prescribe, of any merchandise as tea which may be inferior in purity, quality, and fitness for consumption to the standards established by the Secretary of the Treasury, or of any tea waste, tea siftings, or tea sweepings, for the sole purpose of manufacturing theine, caffeine, or other chemical products whereby the identity and character of the original material is entirely destroyed or changed; and that importers and manufacturers who import or bring into the United States such tea, tea waste, tea siftings, or tea sweepings shall give suitable bond, to be approved as to amount and securities by the Secretary of the Treasury, conditioned that said imported material shall be only used for the purposes herein provided, under such regulations as may be prescribed by the Secretary of the Treasury.

The proviso, expressly allowing as it did the importation of tea waste, tea siftings, tea sweepings, and teas unfit for consumption upon the giving of a bond conditioned that the importation should be used only for the manufacture of theine, caffeine, or other chemical products, made it unnecessary to mix lime and asafetida with tea sweepings in order to permit of their entry at the customhouse, but

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from that change of condition attaching to their importation it can not be reasonably deduced that Congress intended to exclude from the category of the tea sweepings such tea sweepings as were mixed with lime and asafetida for no other purpose than that which the bond was intended to secure. The added lime and asafetida did not modify the tea sweepings in so far as their legitimate use was concerned, and apparently accomplished in them no change except to render them unavailable for a use which was illegal and for which they were unfit. Tea sweepings so mixed can be regarded as denatured only in the sense that the foreign elements added were intended to prevent their diversion to an illegal use. They are not denatured in the sense that their nature has been so changed as to make them unsuitable for the uses for which they were originally fit. The addition of lime and asafetida did not advantage the tea sweepings by making them available for new uses, and neither did it unfit them for any of the uses for which unmixed tea sweepings were truly suitable. The importation under consideration is used for the manufacture of caffeine, just as are other tea sweepings, and is in truth and in fact a grade or class of tea sweepings created not to meet the demands of trade, commerce, or manufacture, but of legislation. While the importation is a class, kind, or grade of tea sweepings, it may be that it is, as claimed by the importers, a crude drug or even a drug advanced in value or condition by grinding in a mixing mill. Nevertheless, as tea sweepings are provided for *eo nomine* in paragraph 13, we must hold that the goods in controversy are more specifically provided for under that designation than as a crude drug in paragraph 477 or as a drug advanced in value or condition in paragraph 27. For the same reason the merchandise can not be classified as waste under paragraph 384 or as a nonenumerated article under paragraph 385.

Whether the importation should be considered as an entirety or as mixed goods which are segregable we do not think it is necessary to decide in this case, inasmuch as the importers failed to show that the goods were segregable and did not establish the quantities of the constituents of the mixture in terms which would permit of the assessment of duty in accordance with the tariff act. Tea sweepings are subjected by paragraph 13 to a duty of 1 cent per pound. It appears from the testimony that the British Government requires that tea sweepings shall be denatured by mixing them with lime and asafetida. The testimony, however, does not make it clear whether that mixture is made on the basis of volume or weight or even that the goods were mixed in accordance with the regulations. In brief, there is nothing in the record which would warrant us in saying what number of pounds of lime and asafetida were actually used in denaturing the tea sweepings under consideration, and con-

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sequently, even if the goods were accepted as segregable, there is no basis furnished by the evidence upon which the deduction claimed could be calculated and the total duties ascertained. Neither has it been proven that it would be practicable for the collector to separate the lime and asafetida from the tea sweepings and thus determine in pounds the quantities of the denaturing agents actually in the goods at the time of importation. Under such circumstances, the entire importation must be subjected to a duty of 1 cent per pound. United States *v.* Strauss (3 Ct. Cust. Appls., 180, 182; T. D. 32464).

The decision of the Board of General Appraisers is *affirmed*.

(T. D. 36456.)

Rosaries.

UNITED STATES *v.* AMERICAN BEAD CO. (No. 1643).

1. CONSTRUCTION—PARAGRAPH 356, TARIFF ACT OF 1913.

An article, to be dutiable under the third clause of paragraph 356, tariff act of 1913, must be *designed* to be worn on apparel or carried on or about or attached to the person, and, if not enumerated in the clause, must be *like* the articles enumerated. The word *designed* should not be construed to mean *susceptible* of being so worn or carried.

2. ROSARIES IN CHIEF VALUE OF SILVER-PLATED METAL, HOW DUTIABLE.

Rosaries in chief value of silver-plated metal, which are not designed for use as jewelry, which are not intended to be carried on or about or attached to the person or worn on or as a part of the attire, and which have only a devotional use, are not dutiable under the "jewelry paragraph" (356), tariff act of 1913, but as articles plated with silver under paragraph 167.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38766.

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Allan R. Brown for appellee.

[Oral argument February 10, 1916, by Mr. Hanson and Mr. Brown.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Rosaries of silver-plated metal and colored glass, metal chief value, imported at the port of New York, were classified by the collector of customs as articles designed to be carried on or about the person and valued above 20 cents per dozen pieces. The importation was accordingly assessed for duty at 60 per cent ad valorem, apparently under that part of paragraph 356 of the tariff act of 1913 which reads as follows:

356. * * * Articles valued at 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including

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buckles, card cases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones or imitation pearls, 60 per centum ad valorem. * * *

The importers protested that the merchandise was not dutiable under paragraph 356, and claimed, among other things, that it was dutiable either at 20 per cent or 50 per cent ad valorem under the provisions of paragraph 167, which paragraph reads as follows:

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

The Board of General Appraisers sustained the protest, and the Government appealed.

The appraiser, by way of answer to the protest, reported to the collector that the goods were rosaries of silver-plated metal and colored glass, metal chief value, and that they were designed to be carried on or about the person and had a value of more than 20 cents per dozen pieces.

At the hearing before the board counsel for the importers conceded that the rosaries were silver plated and that metal was the component material of chief value. The record made in another case, known as protest No. 765354, was then offered in evidence, and General Appraiser Sullivan, apparently acting for the board, made the following ruling:

No objection by Government counsel, the record in 765354 is made a part of the record in this case.

As under the rules of the board the record was not admissible in evidence unless it related to the same class of merchandise, and as the testimony on protest No. 765354 was not connected with the rosaries here involved, it is evident that the Government might well have opposed the incorporation of the record for lack of the proper preliminary proof. No such objection was made, however, and it might well have been regarded by the board as waived, not only because there was ample opportunity, if not an invitation to make it, but because, under the circumstances, the failure to object might reasonably be considered as an admission that the rosaries in both cases were of the same kind, thus rendering unnecessary the remedying of a technical deficiency which, if attention had been called to it by objection, might have been cured. But, however that may

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be, as appellant's brief announces that the Government is not disposed to be technical in the matter and assumes that the rosaries here in controversy are of the same general character and used in the same way as those covered by protest No. 765354, we think we may safely proceed on the assumption that the testimony originally introduced to determine the classification of the goods included in protest No. 765354 is applicable to the rosaries the classification of which is now the subject of dispute. From that testimony it appears that the rosaries are of the class which are used by members of the Catholic Church for devotional purposes. Such rosaries are blessed by the church and are designed to encourage the saying of a certain number of prayers. They are generally used for devotions in church and for morning and evening devotions at home. They are usually kept in the home and are not carried except when required for devotions in church. It further appeared from the testimony that the law of the church does not require that the rosaries should be carried constantly, and that, although there are few Catholics who do not possess a rosary, very few Catholics carry a rosary with them continuously.

The Government claims in support of its appeal that this evidence confirms the report of the appraiser inasmuch as it establishes that the rosaries in question are designed to be carried on or about the person, and from that the conclusion is drawn that the importation is dutiable as assessed under that part of paragraph 356 hereinbefore cited. We do not think that that contention can be sustained.

Under the terms of the provision relied upon by the Government the articles specifically enumerated therein must be such as are designed—that is to say, made—to be worn on the apparel or carried on or about or attached to the person. Articles not specifically enumerated are not within the paragraph unless they are like the enumerated articles and are designed to be worn or carried in the same way. The rosaries here involved are not enumerated. They are not intended to be worn on the apparel as are buckles, pins, collar buttons, cuff buttons, dress buttons, and millinery and military ornaments. Neither are they suitable to be carried on or attached to the person as are chains, hair combs, and hair ornaments. They are, it is true, susceptible of being carried on or about the person, but it can hardly be said of them that they were designed or made for that purpose. Rosaries of the kind under consideration are used in the church and the home, and that use of them does not require them to be carried on or about the person in the same manner as are card cases, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, match boxes, mesh bags, purses, powder cases, stamp cases, and vanity cases. Articles of the class last named are carried on the person in order that they may be avail-

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able for instant use, while the rosaries in controversy are not carried for immediate use, but for the purpose of transferring them from one place of use to another. Moreover, the rosaries bear no resemblance whatever, we think, to any of the articles enumerated in the tariff provision under which they were assessed for duty. Buckles, pins, collar buttons, cuff buttons, dress buttons, and millinery and military ornaments are intended to be worn on the apparel, and it is obvious that such things have nothing in common with the goods under discussion. The use for which the rosaries are intended and to which they are put radically distinguishes them from chains, hair combs, and hair ornaments. Card cases, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, match boxes, mesh bags, purses, powder boxes, stamp cases, and vanity cases designed to be carried on or about the person, are intended for the comfort, pleasure, convenience, or care of the person, and with them rosaries, which minister to the spiritual rather than the physical nature, can scarcely be compared.

Inasmuch as the testimony establishes that the goods imported are not designed to be worn on the apparel or carried on or about or attached to the person in the sense of the tariff provision under which they were assessed for duty; inasmuch as they are not like any of the articles therein enumerated; and inasmuch as they are shown to be composed of silver-plated metal and colored glass, metal chief value, we are of opinion that they are dutiable at 50 per cent ad valorem under the provisions of paragraph 167 as articles or wares of metal, plated with silver.

The question as to whether articles made up in the form of rosaries, but which are designed for use as jewelry, or which are intended to be worn on or as a part of the attire, or which have other than devotional uses, is not involved in this case and is therefore not considered.

The decision of the Board of General Appraisers is *affirmed*.

(T. D. 36457.)

Glass stem ware.

UNITED STATES *v.* FONDEVILLE & VON IDERSTINE (No. 1654).

1. CHIEF VALUE—RULE FOR ASCERTAINING.

In determining the value of each constituent of an article only those expenses incurred in producing the *constituent*, and not those assignable to the *article*, can be considered.—United States *v.* Gredelue (5 Ct. Cust. Appls., 298; T. D. 34476).

2. CHIEF VALUE—BLOWN GLASS AND MOLDED GLASS.

When an article is made of blown glass and molded glass, the one of chief value is the one which had the greatest value *at the time it became* blown glass or molded glass.—United States *v.* Gredelue (5 Ct. Cust. Appls., 298; T. D. 34476).

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3. CHIEF VALUE—BLOWN GLASS AND MOLDED GLASS—ITEM OF VALUE CHARGEABLE TO NEITHER.

When an article is made of blown glass bowl and molded glass stem and foot, and the removal of the boss-shaped top blown on the bowl is necessary to the completion of the article, the cost of such removal, having been incurred *after* the bowl had *become blown glass*, is not a part of the value of the blown glass, but of the article.

4. GLASSWARE OF BLOWN GLASS AND MOLDED GLASS, HOW DUTIABLE.

Plain stemmed glassware, with blown bowl and molded stem and foot, the stem and foot being chief value, like that in United States *v.* Gredelue (5 Ct. Cust. Appls., 298; T. D. 34476) is dutiable as a manufacture of glass under paragraph 109 or 95, tariff acts of 1909 and 1913, and not as being in chief value of blown glass under paragraph 98 or 84.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38696.

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney, of counsel), for the United States.

Comstock & Washburn (*Albert H. Washburn* of counsel) for appellants.

[Oral argument April 25 and 26, 1916, by Mr. Hanson and Mr. Washburn.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Plain stemmed glassware, some of which was entered under the tariff act of 1909 and some under the act of 1913, was classified by the collector of customs at the port of New York as glassware composed wholly or in chief value of blown glass. As required by the date of importation, some of the goods were assessed for duty under paragraph 98 of the act of 1909 and some under paragraph 84 of the act of 1913. The parts of paragraph 98 of the act of 1909 and paragraph 84 of the act of 1913 which are pertinent to the case are as follows:

98. * * * All articles of every description, including bottles and bottle glassware, composed wholly or in chief value of glass blown either in a mold or otherwise; all of the foregoing, not specially provided for in this section, filled or unfilled, and whether their contents be dutiable or free, 60 per centum ad valorem: * * *.

84. * * * All articles of every description, including bottles and bottle glassware, composed wholly or in chief value of glass blown either in a mold or otherwise; all of the foregoing, not specially provided for in this section, filled or unfilled, and whether their contents be dutiable or free, 45 per centum ad valorem: * * *.

The importers protested that the merchandise was not composed in chief value of blown glass and claimed that it was dutiable either at 45 per cent ad valorem under paragraph 109 of the act of 1909 or at 30 per cent ad valorem under paragraph 95 of the act of 1913. The parts of said paragraphs relied upon by the importers are as follows:

109. * * * All glass or manufactures of glass or paste or of which glass or paste is the component material of chief value, not specially provided for in this section, 45 per centum ad valorem.

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95. * * * All glass or manufactures of glass or paste or of which glass or paste is the component material of chief value, not specially provided for in this section, 30 per centum ad valorem.

The Board of General Appraisers sustained the protest and the Government appealed.

The merchandise seems to be identical with that which was passed upon by this court in the case of United States *v.* Gredelue (5 Ct. Cust. Appls., 298; T. D. 34476), and the method of manufacturing the glassware there involved appears to be exactly the same as that employed in producing the goods now under consideration. In this case as in that two men are employed to make the bowl, one of whom carries a drop of molten glass to the blower, who blows the same in a mold into the form of a bowl with a boss-shaped top. After the blowing of the bowl a small quantity of the molten glass is brought by a third workman to a fourth, who shapes it into the stem. Another drop of molten glass is then attached to the stem, which is shaped into the foot. Both stem and foot are made by the same workmen. In the Gredelue case the glassware was composed of blown glass and of molded glass, but whether the merchandise should be classified as blown glass rather than as a manufacture of glass depended wholly on which of the materials was the component of chief value. In order to determine the component of chief value it became necessary to ascertain the value of each of the constituents, and to do that only those expenses incurred in producing the constituents and not those assignable to the article itself could be taken into consideration. Accordingly, we laid down the rule that the value of the blown glass must be taken as of the time it became blown glass and the value of the molded glass as of the time that it became molded glass. The ruling, we think, was not dictum, but was necessary to the decision of the issues raised, inasmuch as the conclusion to be drawn from the testimony adduced as to the relative values of the component materials depended entirely upon the stage of manufacture to which such testimony was addressed.

In support of its appeal the Government contends, first, that in ascertaining the value of the stem no item of cost can be considered after the fused glass has been attached to the bowl, and that the value of the foot must be determined by the cost of the material and the expense incurred in attaching a drop of melted glass to the stem; second, that the witnesses for the importers failed to take into account the cost of removing the boss-shaped top which was blown as a part of the bowl and that therefore the value of the blown glass as fixed by them was less than the true value; and, third, that the testimony submitted by the importers established the value of the stem and the foot in their finished condition in the completed article, and that such value was greater than the true value inasmuch

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as it included costs incurred subsequent to the time when the stem and the foot became molded glass.

In answer to the first point, we think it is sufficient to say that the glassware is composed of blown glass and molded glass, and that the material in two drops of molten glass and the cost of attaching them to the bowl and the stem respectively does not represent the value of the molded glass, but that of molten glass in place for molding. Component material of chief value is defined by paragraph 481 of the tariff act of 1909 and by paragraph 385 of the act of 1913 as follows:

* * * The words "component material of chief value," wherever used in this section, shall be held to mean that *component* material which shall exceed in value any other single *component* material of the article; and the value of each *component* material shall be determined by the ascertained value of such material in its condition as found in the article. [Italics ours.]

See Seeberger *v.* Hardy (150 U. S., 420, 424).

From these provisions it is apparent that Congress did not contemplate the taking of the value of the *material* put into the article (here molten glass), but the value of the *component* materials (here blown glass and molded glass).

As to the second point, we are of the opinion that the cost of removing the boss from the top of the bowl was not an expense incurred in blowing the glass or in making the blown glass of the bowl. In other words, the cost of removing the top was an expense incurred *after* the bowl had become blown glass, and could not be considered as a factor in determining the value of the blown glass in the bowl, which is the only blown glass in the completed article.

The claim made in the third point that the cost of finishing the stem and foot was included in fixing the value thereof we do not think is sustained by the evidence introduced by the importers. The record, as we read it, shows that the importers' witnesses included in the cost of producing the stem and the foot nothing more than the value of the molten material used, the expense of putting such material in place, and the labor cost of fashioning, but not of finishing, the stem and foot.

The decision of the Board of General Appraisers is *affirmed*.

(T. D. 36458.)

Cigar lighters.

BISCHOFF & CO. *v.* UNITED STATES (No. 1652).

1. CONSTRUCTION—N. S. P. F.

The presence of n. s. p. f. in a paragraph advises customs authorities that merchandise otherwise within it may be classified under some other paragraph, and if the other paragraph contains an *eo nomine* provision and the paragraph in which n. s. p. f. is found is general and not *eo nomine*, the former controls. An *eo nomine* provision

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is not necessarily shorn of its controlling force because coupled with n. s. p. f. Where one of two competing paragraphs contains n. s. p. f. and the other does not, the description in each being in other respects equally specific, the presence in the one and the absence from the other of such provision determines the classification of merchandise equally within either paragraph.

2. POCKET CIGAR LIGHTERS, HOW DUTIABLE.

Cigars lighters designed to be carried on the person are within paragraph 356, tariff act of 1913 ("articles * * * such as * * * cigar cutters, cigar holders," etc.), and also within paragraph 381 ("all smokers' articles whatsoever, not specially provided for in this section"). By virtue of paragraph 386 ("if two or more rates of duty shall be applicable to any imported article it shall pay duty at the highest of such rates") they are dutiable under paragraph 356.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7810 (T. D. 35880).

[Affirmed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument February 10, 1916, by Mr. Brown and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court.

The importation was invoiced as "cigar lighters," and is so referred to.

The only question in the case is one of law, and involves the consideration of the following paragraphs of the tariff act of 1913:

356. Jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces, 60 per centum ad valorem; rope, curb, cable, and fancy patterns of chain not exceeding one-half inch in diameter, width, or thickness, valued above 30 cents per yard; and articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, card cases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, * * * 60 per centum ad valorem. * * *

381. Pipes and smokers' articles: Common tobacco pipes and pipe bowls made wholly of clay, 25 per centum ad valorem; other pipes and pipe bowls of whatever material composed, and all smokers' articles whatsoever, not specially provided for in this section, including cigarette books, cigarette-book covers, pouches for smoking or chewing tobacco, and cigarette paper in all forms, except cork paper, 50 per centum ad valorem; meerschaum, crude or unmanufactured, 20 per centum ad valorem.

No question being made as to its correctness, we adopt the description of a sample of the merchandise contained in the opinion of the Board of General Appraisers. It—

Consists of an article of the shape and size of a gold-tipped paper cigarette, composed of gilt and enameled metal, valued above 20 cents per dozen pieces, and designed to

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be carried on the person. The tip is removable, and when pulled off quickly a sparking device in the interior ignites a wick.

The evidence was undisputed that it is carried by smokers to light cigars.

The importation was assessed under paragraph 356, and claimed to be dutiable under paragraph 381. A majority of the Board of General Appraisers, one member filing a dissenting opinion, affirmed the collector's assessment, and the case is here upon the importers' appeal. They concede for the purposes of this case that, if it were not for the provisions of paragraph 381, the merchandise would be dutiable as assessed, and the Government concedes that both paragraphs embrace it. The question, therefore, for us is, which of the recited provisions more closely describes these cigar lighters.

Paragraph 381 indicates that it is designed to cover pipes and smokers' articles and to include "all smokers' articles whatsoever not specially provided for," and is to include cigarette books, cigarette-book covers, and various other things therein enumerated. This paragraph is a reenactment, so far as affects any issue here, of paragraphs 459 and 475 of the tariff acts of 1897 and 1909, respectively.

These provisions have been the subject of consideration by this court in several cases, among them being Vandiver *v.* United States (1 Ct. Cust. Appls., 194; T. D. 31219); Knauth *v.* United States (1 Ct. Cust. Appls., 334; T. D. 31432); and Mark Cross Co. *v.* United States (1 Ct. Cust. Appls., 377; T. D. 31457).

In the Knauth case, *supra*, it was said, speaking of the term "all smokers' articles whatsoever," that—

> The intensified form of the expression used, together with the far-reaching effect of the qualifying words stated, manifests to our mind a purpose on the part of the legislature to reach out into all branches of trade and commerce and to gather within the dutiable provisions of this paragraph everything used chiefly by smokers, in that pursuit, and for that purpose, wherever else they may occur or within whatever other provisions of the tariff law the merchandise may be included.

As suggested, paragraph 381, as did its ancestors, contains the n. s. p. f. provision. The purpose and effect, generally speaking, of such provisions was considered in the case of United States *v.* Snow (6 Ct. Cust. Appls., 120; T. D. 35388). In substance it was said that its presence in a given paragraph advised the customs authorities that merchandise otherwise within it might be classified under some other paragraph; that if the other paragraph contained an *eo nomine* provision and the paragraph in which the n. s. p. f. provision was found was general and not *eo nomine*, the former would control; that an *eo nomine* provision was not necessarily shorn of its controlling force because coupled with the provision n. s. p. f.; that where one of two competing paragraphs contained the n. s. p. f. provision and the

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other did not, the description of each being in other respects equally specific, the presence in the one and the absence from the other of such provision would determine the classification of merchandise equally within either paragraph. See in this connection Hall *v.* United States (131 Fed., 684; T. D. 25340); same case (136 Fed., 774); and Thomas *v.* Wanamaker (129 Fed., 92).

Paragraph 356 does not contain the n. s. p. f. provision. It is commonly referred to as the jewelry paragraph, but manifestly includes things not strictly such. The clause particularly under consideration here enumerates, with the introduction "such as and including" many articles that promote the comfort or convenience of the person, the principal purpose of some of which may be adornment with some degree of utility, while in others the utilitarian purpose is predominant and adornment subsidiary, all, however, possessing the characteristic of jewelry, in that they are carried on or about or attached to the person. The quoted introductory words indicate that the denominatively mentioned articles are to be regarded, so far as they go, not only as *eo nomine* provisions but illustrative as well, and the words "like articles" following this *eo nomine* enumeration emphasize the intent that the articles therein expressly named and like articles not specifically mentioned, but *like in purpose* and *like in use*, are to be included within it. Among those named are cigar cases, cigar holders, cigar cutters, cigarette cases, cigarette holders, match boxes, all of which, excepting possibly the last, are undoubtedly smokers' articles; hence it is no stretch to say that smokers' articles which can fairly be said to be like, in either use or purpose, any of those specifically named, if in other respects within the provisions of the clause, are classifiable thereunder. Further discussion would seem unnecessary to demonstrate that cigar lighters, in their use and purpose, if designed to be carried on or about the person, are articles like the smokers' articles above named because they are for the comfort or convenience, or both, of the smoker in the enjoyment of his habit. The cigar lighters may also well be said to be like match boxes when related to smokers' uses, because the latter are designed to carry the matches which are the direct means of enabling the smoker to enjoy his cigar or cigarette, while the former serve the use and purpose of match boxes and their contents.

From what has already been stated, we think it might be concluded that these cigar lighters are equally within the provisions of paragraph 356 and those of paragraph 381. It is possible, however, to say that the use of the intensified expression referred to in paragraph 381 was designed to serve as an *eo nomine* description of each and every smokers' article, which, if granted, might seem still to leave the merchandise dutiable thereunder. Then, however, one would be

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confronted with the fact that the provision in paragraph 356 is really a legislative act of a date later than paragraph 381, because paragraph 381 is a reenactment of earlier statutes, while paragraph 356 is the first enactment of its particular kind. It relates to some of the articles covered by paragraph 381, and therefore requires the presumption that Congress had in mind that the theretofore adjudicated scope of the latter paragraph would result in removing from paragraph 381 the smokers' articles *eo nomine* mentioned in paragraph 356 and requires consideration as to whether the force of the term "like articles" therein did not describe these cigar lighters with a specificity at least equal to the intensified expression of paragraph 381. It seems unnecessary, however, to indulge in this refinement of reasoning in order to decide this case.

The question is a close one; but, however it may be approached, we think the most favorable view of the importers' claim is that these cigar lighters are *equally* within the provisions of both paragraphs. This conclusion would give opportunity for the application of the rule of law that the importer in such case is entitled to the benefit of the doubt were it not for the mandatory provision of paragraph 386 that "if two or more rates of duty shall be applicable to any imported article it shall pay duty at the highest of such rates."

Giving force as we must to this provision, we think the proper disposition of the case is reached by affirming the judgment below, and it is so ordered.

(T. D. 36459.)

Rattan reeds.

GRASER-ROTHE *v.* UNITED STATES (No. 1686).

REEDS MADE FROM RATTAN, HOW DUTIABLE.

Reeds made from rattan, used, sometimes after being further processed and sometimes without such further treatment, in the manufacture of furniture, chairs, baby carriages, brooms, and some other articles, are not admissible free of duty as rough rattan sticks cut into lengths only under paragraph 648, tariff act of 1913; and, so far as this record shows, the collector's classification of them under paragraph 173 as chair canes manufactured from rattan is correct.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39169.

[Affirmed.]

B. A. Levett for appellant.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

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[Oral argument May 17, 1916, by Mr. Levett and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise in this case was assessed by the collector as chair canes manufactured from rattan under paragraph 173 of the act of 1913. The protest claimed free entry as "rough rattan sticks cut in lengths only" under paragraph 648 of the same act.

In the argument before this court the importer claims free entry upon the theory that the merchandise is "reeds, unmanufactured * * * or not further advanced than cut into lengths," which is a prescribed free-entry condition in paragraph 648, which we quote:

648. Woods: Cedar, including Spanish cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all forms of cabinet woods, in the log, rough, or hewn only, and red cedar (Juniperus virginiana) timber, hewn, sided, squared, or round; sticks of partridge, hair wood, pimento, orange, myrtle, bamboo, rattan, reeds unmanufactured, india malacca joints, and other woods not specially provided for in this section, in the rough, or not further advanced than cut into lengths suitable for sticks for umbrellas, parasols, sunshades, whips, fishing rods, or walking canes.

We also here insert paragraph 173:

173. Chair cane or reeds wrought or manufactured from rattans or reeds, 10 per centum ad valorem; osier or willow, including chip of and split willow, prepared for basket makers' use, 10 per centum ad valorem; manufactures of osier or willow and willow furniture, 25 per centum ad valorem.

The importer contends that the merchandise is identical with that considered by this court in United States *v.* Winter & Smillie (4 Ct. Cust. Appls., 522; T. D. 33939). That case involved the construction of paragraphs 713 and 212 of the act of 1909, which, for the purposes of this case, are identical with those above quoted. There the board had found, and this court sustained the finding, that the merchandise was "the crudest form of reed imported." The judgment of the board that it was entitled to free entry was affirmed.

In the case at bar the board in its opinion states that the merchandise does not "appear to be the crudest form in which reeds are imported"; that "an examination of the official sample would seem to indicate that they are not the unmanufactured reeds contemplated in paragraph 648"; and that they are "generally used, without further treatment than to be cut into lengths, in the making of baby carriages and to some extent in the manufacture of chairs and other articles of furniture."

It is not necessary to recite the evidence upon which the board relied in reaching these conclusions. It was, as the board suggests, seemingly directed rather to the establishment of the fact that the reeds came from China, as did those involved in the Winter & Smillie case, than to the maintenance of the proposition that they were

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either rough rattan sticks cut into lengths only, or were reeds unmanufactured or not further advanced than cut into lengths.

The burden was upon the importer to show either that the imported merchandise was rough rattan sticks, etc., as stated in his protest, or was reeds unmanufactured or not further advanced than cut into lengths, as claimed here. It is obvious that this merchandise is not rough rattan sticks and equally apparent that it is reeds made from rattan. The record is entirely silent as to how these reeds are produced, except that one of importer's witnesses stated that he had heard that in China reeds were made by hand. Assuming this to be true, clearly it does not establish that these reeds are unmanufactured, neither are we, upon an examination of the exhibits before us, whatever our belief may be on that subject, justified in *finding* that they are unmanufactured or not further advanced than cut into lengths. Neither can we say, upon the record here, that they are identical with the reeds involved in the Winter & Smillie case. It is true that the evidence in that case established (although that fact was not stated in the opinion because of no importance) that the reeds there under consideration were made in China. It also tended to show that they were principally used in the manufacture of brooms, could not be used for the manufacture of chairs or furniture, and could not by further processes of manufacture be made suitable for chair purposes.

In this case, as the board well says in its opinion, the importer has established by his proof that these reeds, in the condition in which they are imported, are used, sometimes after being further processed and sometimes without such further treatment, in the manufacture of furniture, chairs, baby carriages, brooms, and some other articles.

Upon this state of the record, and we are of course limited so far as the *facts* are concerned to what is established thereby, we think the judgment of the board must be affirmed.

In this view it becomes immaterial to consider importer's question of law, namely, that where an article is dutiable according to its use, such use must be determined as of the time the tariff act took effect.

The judgment of the Board of General Appraisers is *affirmed*.

(T. D. 36460.)

Spruce gum—Drugs.

UNITED STATES *v.* LEAVITT (No. 1650).

1. "SPRUCE GUM, CLEANED."

Following United States *v.* Maine Central Railroad Co. (7 Ct. Cust. Appls., —; T. D. 36427) spruce gum is not classifiable as a drug under either paragraph 27 or 477, tariff act of 1913.

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2. PLEADING—PROTEST—EVIDENCE—PRESUMPTION IN FAVOR OF COLLECTOR.

The collector's assessment of merchandise, even if incorrect, shall not be disturbed unless the protest makes claim for assessment under the correct provision of the tariff act; and the decision of the Board of General Appraisers sustaining a protest which objects to one wrong classification and claims another also wrong is reversed.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38383.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Submitted on record by appellee.

[Oral argument April 11, 1916, by Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The present case relates to certain merchandise which was reported by the appraiser to be "spruce gum, cleaned," and was assessed with duty by the collector at the rate of 10 per cent ad valorem under the provision for drugs, advanced in value or condition by shredding, grinding, chipping, crushing, or other like process, contained in paragraph 27 of the tariff act of 1913.

The importer protested against the assessment, claiming free entry for the merchandise under the provisions of paragraph 477 of the same act for drugs not advanced in value or condition by means of any of the processes above enumerated.

The protest was submitted to the Board of General Appraisers and was sustained. The Government appeals.

Merchandise which is substantially identical with that now before the court was involved in the case of United States *v.* Maine Railroad Co., which has just been decided by the court (7 Ct. Cust. Appls., —; T. D. 36427). In that case the court held that the article in question is not a drug within the meaning of either paragraph 27 or paragraph 477 of the tariff act of 1913. In accordance, therefore, with the foregoing ruling of the court, it is likewise held herein that the present merchandise is not within the enumerations of either of the paragraphs above cited. Inasmuch, therefore, as the importer in his protest claimed assessment of the merchandise under paragraph 477, *supra*, only, the protest should have been overruled regardless of the incorrectness of the collector's assessment. The rule is of course elementary that the collector's assessment of merchandise, even if incorrect, shall not be disturbed unless the protest makes claim for assessment under the correct provision of the act. In the present case, therefore, the protest should have been overruled, and the board's decision sustaining it is *reversed*.

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(T. D. 36461.)

Zinc-bearing ores.

NATIONAL ZINC CO. *v.* UNITED STATES (No. 1665).

1. UNDERVALUATION—PARAGRAPH I OF SECTION 3, TARIFF ACT OF 1913.

When zinc ore was entered, in accordance with the estimate on the consular invoice as being 40 per cent zinc, and the subsequent official assay showed 46.6 per cent zinc, there was no undervaluation such as would subject it to the "additional duty" provisions of paragraph I of section 3, tariff act of 1913. But when the entry stated the market value of the zinc in a ton of 40 per cent zinc ore to be less than the consular invoice showed, less than the price stated for it in the contract under which it was purchased, and less than the true market value as found by the appraiser, there was.

2. CONSTRUCTION—PARAGRAPH N, SUBSECTION 1, SECTION 4, AND PARAGRAPH I OF SECTION 3, TARIFF ACT OF 1913.

The fact that zinc ore was entered for rewarehousing to be smelted and the zinc exported does not relieve it of the additional duty incurred under paragraph I of section 3, tariff act of 1913, for undervaluation, since paragraph N, subsection 1, section 4, provides that the amount of the duties payable upon such imported ores at the time of their importation shall stand charged against the bonds of the bonded warehouses, and that the metals producible from the bonded ores or any portion thereof may be withdrawn for domestic consumption upon the payment of the duties chargeable against an equivalent amount of ores from which said metals would be producible in their condition as imported. Especially is this true in view of the provision of paragraph I, that the additional duties levied thereunder shall not be refunded "in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback."

3. CLERICAL ERROR, MANIFEST, WHAT NOT.

An understatement of the market value per ton of zinc ore, varying from the consular invoice and from the price stated in the contract for purchasing it, the arithmetical extension in the entry being correctly made upon the basis of the declared price per ton, declared number of tons, and declared percentage of zinc content, is not manifest clerical error within the meaning of paragraph Y of section 3, tariff act of 1913.

4. CONSTRUCTION—PARAGRAPH 162, TARIFF ACT OF 1913.

The fact that paragraph 162, tariff act of 1913, provides a special method of appraising zinc ores does not relieve them from being entered upon invoice as other importations, nor does it relieve their importer from the consequences of undervaluation.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7823 (T. D. 35948).

[Affirmed.]

Brooks & Brooks (*Frederick W. Brooks, jr.*, of counsel; *James L. Gerry* on the brief) for appellants.

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

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[Oral argument April 26, 1916, by Mr. Frederick W. Brooks, jr., and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in the present case is zinc-bearing ores imported in part from Mexico and in part from Canada under the tariff act of 1913.

Such ores when imported for domestic consumption are dutiable under paragraph 162 of the act at the rate of 10 per cent ad valorem upon the zinc contained therein; when they are imported for smelting and for the reexportation of their metal content they are admitted free of duty, subject, however, to certain regulations prescribed by paragraph N, subsection 1, section 4, of the same act.

The issue now upon appeal does not relate to the assessment of primary duty upon the imported ores, but to the action of the collector subjecting them to the "entered value" and "additional duty" provisions of paragraph I of section 3 of the act.

For convenient reference the three provisions of law just referred to are here copied:

162. Zinc-bearing ores of all kinds, including calamine, 10 per centum ad valorem upon the zinc contained therein: *Provided*, That on all importations of zinc-bearing ores the duties shall be estimated at the port of entry, and a bond given in double the amount of such estimated duties for the transportation of the ores by common carriers bonded for the transportation of appraised or unappraised merchandise to properly equipped sampling or smelting establishments, whether designated as bonded warehouses or otherwise. On the arrival of the ores at such establishments they shall be sampled according to commercial methods under the supervision of Government officers, who shall be stationed at such establishments, and who shall submit the samples thus obtained to a Government assayer, designated by the Secretary of the Treasury, who shall make a proper assay of the sample and report the result to the proper custom officers, and the import entries shall be liquidated thereon, except in case of ores that shall be removed to a bonded warehouse to be refined for exportation as provided by law. And the Secretary of the Treasury is authorized to make all necessary regulations to enforce the provisions of this paragraph.

Paragraph N, subsection 1, section 4: That the works of manufacturers engaged in smelting or refining, or both, of ores and crude metals, may upon the giving of satisfactory bonds be designated as bonded smelting warehouses. Ores or crude metals may be removed from the vessel or other vehicle in which imported, or from a bonded warehouse, into a bonded smelting warehouse without the payment of duties thereon and there smelted or refined, or both, together with ores or crude metals of home or foreign production: *Provided*, That the bonds shall be charged with the amount of duties payable upon such ores and crude metals at the time of their importation, and the several charges against such bonds may be canceled upon the exportation or delivery to a bonded manufacturing warehouse established under paragraph M of this section of an amount of the same kind of metal equal to the actual amount of dutiable metal producible from the smelting or refining, or both, of such ores or crude metals as determined from time to time by the Secretary of the Treasury: *And provided further*, That the said metals so producible, or any portion thereof, may be withdrawn for domestic consumption, or transferred to a bonded customs warehouse, and withdrawn therefrom, and the several charges against the bonds canceled upon the payment of the duties chargeable against an equivalent amount of ores or crude

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metals from which said metal would be producible in their condition as imported: *And provided further*, That on the arrival of the ores and crude metals at such establishments they shall be sampled and assayed according to commercial methods under the supervision of Government officers, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer: *Provided further*, That antimonial lead produced in said establishments may be withdrawn for consumption upon the payment of the duties chargeable against it as type metal under existing law and the charges against the bonds canceled in a similar sum: *Provided further*, That all labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer: *Provided further*, That all regulations for the carrying out of this section shall be prescribed by the Secretary of the Treasury.

Paragraph I of section 3: That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make entry of such merchandise, but not after either the invoice or the merchandise has come under the observation of the appraiser, make such addition to the entry to or such deduction from the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per centum of the total appraised value thereof for each 1 per centum that such appraised value exceeds the valu declared in the entry: * * * The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury * * *.

Two protests are now before the court, and these severally comprehend a large number of individual entries. The same issue, however, is raised by all of them; therefore we will take up the first entry in protest 780293, namely, 134a, in order to present in concrete form both the present question and our answer to it.

In this instance the importers received a carload of zinc-bearing ores from Canada, of which it made entry for rewarehousing at the port of Kansas City upon a consular invoice executed by its agent at the port of exportation. According to the invoice the car contained 30 tons of ore containing 2 per cent of lead, 40 per cent of zinc, and 20 ounces of silver per ton, having a total value of $12 of lead, $360 of zinc, and $130 of silver. The lead and silver of the importation were free of duty, the lead content being less than 3 per cent thereof. When the importers made entry of the ores as aforesaid it made a deduction from the value of the zinc given in the invoice in order to lower the same to its alleged market value. This was done by an indorsement upon the invoice in the following words:

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Changed by importer to approximate market value, all figures being estimated. Zinc contents, 40 per cent; lead contents, not over 3 per cent. Value per Am. ton as to zinc only, $8.10. Total value, $243.

The imported ores were thereupon sampled, assayed, and appraised in accordance with the statutory provisions above copied and were found to contain 46.6 per cent of zinc instead of 40 per cent as entered and to be of the value of $15.56 per ton instead of $8.10 per ton as entered. The collector thereupon assessed so-called "additional duties" upon the importations, under the provisions of paragraph I, above copied, and the importers protested against that assessment.

Upon the foregoing statement, if taken alone, it would seem upon first impression that the protest should be sustained, since it would naturally be concluded that the undervaluation in question arose from a discrepancy between the declared zinc content of the ores and the zinc content thereof subsequently discovered by the official assay. For it may be assumed that Congress would not have intended to penalize an importer because of a bona fide error in a statement of the zinc content of ores before the same were sampled and assayed. Therefore, if the additional duties were assessed in this case because of the fact that the importers declared the zinc content of the ores to be 40 per cent, whereas the subsequent official assay discovered 46.6 per cent of zinc therein, it would seem clear that the assessment should be set aside. A review of the record, however, discloses the fact that the additional duties in question were not assessed because of such a discrepancy but rest upon a radically different basis.

When the present merchandise was imported into this country, the importers made entry thereof upon a duly executed consular invoice, wherein it was stated that the imported ores contained 40 per cent of zinc and that the market value thereof was $360. When entering the importation the importers did not alter the invoice statement concerning the percentage of zinc in the imported ores, for this percentage is stated at the same figure in both the invoice and entry, to wit, 40 per cent. Nevertheless, the importers at entry reduced the value of the 40 per cent zinc content of the imported ores to $243, as a declaration of the alleged market value thereof; that is to say, the importers thereby declared at entry that the imported ores possessed a market value of only $243 upon the basis of 40 per cent of zinc. The reduction, it may be repeated, did not relate to the percentage of zinc in the ores but to the market value of the zinc contained in the imported ores in case they carried 40 per cent of zinc.

It may be asserted without argument that the importers were bound to enter the importations under a bona fide statement of the zinc content thereof, and this the importers apparently did in the present case. And it was equally the duty of the importers to state

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correctly the market value of the zinc in the imported ores in case they were found to contain the zinc content thus declared by the importers. It is certainly clear that if the present ores had assayed 40 per cent zinc the appraiser had the right to understand that the market value declared by the importers upon that basis was correct. This duty, however, the importers distinctly failed to perform, for the declarations in question seem to have been almost arbitrary in character. In the entry above selected as an example the declared value was $8.10 per ton for 40 per cent zinc ores, whereas the actual market value of that percentage of zinc was found by the appraiser to be $9.95 per ton. There was no appeal to reappraisement. The ores covered by the entry were found upon assay to contain 46.6 per cent of zinc and the market value of such a content was found by the appraiser to be $15.56 per ton, but the additional duties now under protest were not assessed upon the difference between $8.10 per ton and $15.56 per ton, but upon the difference between $8.10 per ton and $9.95 per ton, both of which values related to the 40 per cent zinc content adopted by the importers in their declaration. This, therefore, was the discrepancy which provoked the assessment of the so-called additional duties in this case, namely, that the importers understated the market value of the zinc content of the imported ores even according to their own statement of the quantity thereof. The collector in every case conceded that the importers could do no more than make a bona fide estimate of the percentage of zinc in the ores, and that the official assay alone would reveal the true percentage; but at the same time the collector insisted that the importers should correctly state the market value of the importation per ton upon the basis of their own estimated percentage of the zinc therein. This is well stated in the language of the collector himself, appearing in his letter transmitting protest 780293 to the board:

> The entered value per ton of a given percentage of zinc should conform to the contract for zinc from that particular mine. On liquidation that entered value of a given percentage of ore is raised or lowered in conformity with the terms of that particular contract, according to the percentage of ore shown by the assay. When this appraised value of the same percentage of ore exceeds the entered value as above, additional duty was assessed.

It is contended by the importers that the market value of the imported ores could only be estimated, even though the zinc content thereof should be correctly given in the invoice. This claim, however, is not sustained by the record. It may safely be assumed that at the time of the present importations there existed a market value for the zinc in such ores if containing a 40 per cent zinc content. The appraiser found that market value to be $9.95 per ton. Furthermore, it appears without contradiction that the ores in question were consigned to the importers under a contract providing for the follow-

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ing price, viz, "$26 for 45 per cent when spelter is 5½ cents, with variation of 85 cents up and down for zinc and $7 spelter variation. Silver to be paid less 6 ounces at 75 per cent of New York price, and lime penalty of $1 in excess of 2 per cent fractions proportionate. This is based on freight rate of $9, any excess for your account."

It is stated, without contradiction, that this form of contract has been almost universal in the trade since zinc ores first came to be imported in considerable quantities into this country.

It thus appears that the terms of the purchase contract under which these ores were imported adjusted themselves automatically to any percentage of zinc which might be found in the imported ores. Therefore, if a given percentage of zinc content were adopted as a basis of computation the value thereof per ton could be accurately calculated by the terms of the contract alone. When the importers therefore estimated the zinc content of the ores to be 40 per cent and named a price based upon that estimate, it was within its power to name the price which correctly corresponded with that estimate in accordance with the terms of the contract for the ores in question, and it was its duty to do this. If the ores had thereupon assayed at the same percentage of zinc as estimated by the importers the importers' declaration of value based upon that percentage would have been correct.

The foregoing statement is exemplified by the following extract from the testimony of Miss Woodruff, the customs liquidator at St. Louis, in respect to a similar entry. It may be added that the Mr. Jacobson referred to by General Appraiser Fischer is the secretary and treasurer of the appellant company.

Q. Can you tell where the discrepancy is in his figures? Will you state to the court the discrepancy in his method of figuring, of his conclusion?—A. I would like to have a specific case.

Q. Take the same one that we had, reappraisment 79580?—A. That is ore under rewarehouse bond 279, reappraisment No. 79580; it was entered under contract No. 1; under the provisions of this contract 45 per cent zinc is worth $26, with a variation of 85 cents for every unit above or below 45 per cent; it is a straight variation of 85 cents for every percentage of difference in the assay. In this case the assay was 54 per cent, and I added at the rate of 85 cents for each unit over 45 per cent; therefore I added $7.65. The spelter price was $5.50½, which was a half cent over the spelter price in the contract; and I should add at the rate of $7 per ton; so I added 3½ cents, making $33.68½; from that I deducted freight of $9, as stated in the contract, giving an appraised value of $24.68½ per ton.

Q. What was the entered value?—A. That is for 54 per cent zinc. In arriving at the entered value of 54 per cent zinc, which is the zinc which arrived, I take the entered value of $12.06 for 40 per cent zinc; to that I added 85 cents per unit for every percentage over 40; in this case it was 14 per cent, to be added at the rate of 85 cents, giving me an entered value for 54 per cent zinc of $23.96. The difference between the entered value and the appraised value on the same percentage of zinc is 73 cents, an advance of 3 per cent. I would like to ask if there is any objection to my method of arriving at the entered value of the assay percentage of zinc?

Mr. GILBERT. That is beyond me.

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General Appraiser FISCHER. Mr. Jacobson admits that under that contract the method pursued by the witness is correct.

Q. (By Mr. GILBERT.) You had the contract before you all the time?—A. Yes, sir.

It may be noted that in several purchase contracts which are copied into the record the imported ores were to be paid for by the importers according to the average monthly price reported for zinc during the month of the arrival of the importations. This, however, does not affect the issue, since the importers and the appraiser are said to have agreed upon the period preceding the arrival of the ores for which the average price in the case of these importations should be taken. Otherwise the value of the zinc in the ores at the time of importation would be controlling.

The importers lay special emphasis upon the fact that the importations now in question were not intended for consumption in this country, but were entered for rewarehousing to be smelted and the zinc reexported. It is claimed that in such case it is immaterial what value is declared upon the merchandise, since it is not to enter into the domestic markets. There is some conflict in the testimony upon this subject, however, the witness R. R. Kreeger, deputy collector, saying that the appellant company does not reexport all the zinc smelted from its imported ores and that he could not be specific upon this point concerning the present entries. But regardless of the fact concerning these identical ores, it is provided by paragraph N, *supra*, that the amount of the duties payable upon such imported ores at the time of their importation shall stand charged against the bonds of the bonded warehouses, and that the metals producible from the bonded ores or any portion thereof may be withdrawn for domestic consumption upon the payment of the duties chargeable against an equivalent amount of ores from which said metals would be producible in their condition as imported. This arrangement implies that the record of each importation shall be completed in preparation for the possible withdrawal of the metal produced therefrom for domestic consumption, and this would require a formal entry thereof as complete and correct as may be under the circumstances. It may furthermore be noted that in paragraph I, above copied, Congress has expressly provided that the "additional duties" levied thereunder shall not be refunded "in case of exportation of the merchandise or on any other account, nor shall they be subject to the benefit of drawback."

It is contended by the importers that the imposition of additional duties in such cases is contrary to the established practice of the department, and that this practice was so long-continued that the importers were justified in relying upon it as authoritative. This contention, however, is largely answered by the fact that zinc-bearing ores were not dutiable *eo nomine* under the tariff act of 1897 and

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appear to have been admitted free under that act under the provisions for calamine and crude minerals in paragraph 514 and 614, respectively (United States *v.* Brewster, 167 Fed., 122), and also by the additional fact that under paragraph 193 of the tariff act of 1909 zinc-bearing ores were subject to a specific and not an ad valorem duty. It need hardly be noted that the provision for the assessment of additional duties applies by its express terms to ad valorem importations only.

It is furthermore claimed by the importers that their contracts were made known to the collector at the time of the entries in question and that the discrepancies in value were therefore in the nature of mere clerical errors for which no additional duties should be imposed. In order to sustain this claim it must appear from the record that the case for additional duties arose from a *manifest* clerical error. The present record, however, does not disclose such a state of facts. United States *v.* Proctor & Co. (5 Ct. Cust. Appls., 44; T. D. 34091) and cases cited.

It is also contended for the importers that the provisions of paragraph 162 and paragraph N of section 4, *supra*, relative to the ascertainment of the zinc content of the imported ores are exclusive and relieve the importers from the duty of making an accurate or exact statement of the value of the ores at entry, since such value must necessarily depend upon the percentage of zinc in the ores, and this percentage can not authoritatively or officially be known at the time of the entry. In answer to this, however, it should be said that although paragraph 162, *supra*, specially provides the method of appraising such importations, yet the ores must be entered upon invoice the same as other merchandise, and apparently this has been the established practice. This practice was followed by the importers in the present case. And while the importers should not be penalized for making a bona fide mistake in estimating the quantity of zinc in the imported ores, there is no excuse apparent in the record for the undervaluation of the zinc content of the imported ores upon the basis of the estimated content actually adopted by the importers themselves in the entry.

The Government in its brief questions the jurisdiction of the board and the court to hear and decide the issue raised by the importers' protest and petition upon appeal. We are of the opinion that the issues thus raised are within the jurisdiction of the board and the court, but in view of the present decision it is not necessary to enlarge upon this branch of the Government's argument.

The foregoing review of one of the entries in question sufficiently sets out the facts and principles which control in the case of all the entries now before the court. The decision of the board overruling the protests is accordingly *affirmed*.

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(T. D. 36462.)

Leaf tobacco.

ST. ELMO CIGAR CO. *v.* UNITED STATES (No. 1571).

EVIDENCE—PRESUMPTION IN FAVOR OF COLLECTOR.

The evidence in this case being in such hopeless conflict that the court is unable to decide any question of law or fact presented, nothing is possible, under the rule that the burden is on the appellant to establish the material allegations of his protest by a convincing preponderance of the evidence, except to affirm the decision of the Board of General Appraisers sustaining the decision of the collector.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37363.

[Affirmed.]

Frank L. Lawrence (*Wm. L. Wemple* and *Isadore B. Dockweiler* of counsel) for appellant.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument April 28, 1916, by Mr. Wemple and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal concerns tobacco imported from Cuba and entered for duty at the port of Los Angeles, Cal. Having been the product of the soil of Cuba no question is made in the case as to the discount of 20 per cent from the rates prescribed by paragraph 181 of the tariff act of 1913 by virtue of the Cuban reciprocity treaty (33 Stat. L., 2136), section 4, paragraph B, of the same act.

The paragraphs immediately in question are those following of the tariff act of 1913:

181. Wrapper tobacco, and filler tobacco when mixed or packed with more than 15 per centum of wrapper tobacco, and all leaf tobacco the product of two or more countries or dependencies when mixed or packed together, if unstemmed, $1.85 per pound; if stemmed, $2.50 per pound; filler tobacco not specially provided for in this section, if unstemmed, 35 cents per pound; if stemmed, 50 cents per pound.

182. The term wrapper tobacco as used in this section means that quality of leaf tobacco which has the requisite color, texture, and burn, and is of sufficient size for cigar wrappers, and the term filler tobacco means all other leaf tobacco. Collectors of customs shall not permit entry to be made, except under regulations to be prescribed by the Secretary of the Treasury, of any leaf tobacco, unless the invoices of the same shall specify in detail the character of such tobacco, whether wrapper or filler, its origin and quality. In the examination for classification of any imported leaf tobacco, at least one bale, box, or package in every ten, and at least one in every invoice, shall be examined by the appraiser or person authorized by law to make such examination, and at least ten hands shall be examined in each examined bale, box, or package.

The invoice contained 230 bales of leaf tobacco, 89 of the bales being of mixed fillers and the rest all fillers. The appraiser at the

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port of Los Angeles returned 16 bales as wrapper tobacco, 31 bales as containing percentages of 15 per cent or less of wrapper tobacco, and the remaining 183 bales as filler tobacco. Duty was assessed accordingly. The importers, however, in their protest limited their claim to 29 bales. This included the 16 bales returned as all wrapper tobacco, and 13 of the 31 bales which were assessed according to the percentage of wrapper tobacco contained in each bale. As to the remaining 18 of the 31 bales aforesaid no protest was made. It appears, however, from the record that they were withdrawn for consumption by the importers, the wrapper duty duly paid on the percentages of wrapper leaves found by the appraiser, and a percentage of it at least was used for wrapping cigars. (R. 26.)

Two issues are presented, the one of law and the other of fact. Primarily, it is contended by the importers, appellants, that the definition of wrapper tobacco under the tariff acts of 1897, paragraph 214, and 1909, paragraph 221, which in this particular were identical, was materially changed by the definition as it appears in the tariff act of 1913, paragraph 182. They read:

TARIFF ACT OF 1897.

214. The term wrapper tobacco * * * means that quality of leaf tobacco which is suitable for cigar wrappers, * * *.

TARIFF ACT OF 1909.

221. The term wrapper tobacco * * * means that quality of leaf tobacco which is suitable for cigar wrappers, * * *.

TARIFF ACT OF 1913.

182. The term wrapper tobacco * * * means that quality of leaf tobacco which has the requisite color, texture, and burn, and is of sufficient size for cigar wrappers, * * *.

The court does not find it necessary upon this record to decide the question of law thus presented. Neither does the court find it necessary to, nor does the court upon this record, approve or disapprove the finding of the board relative to the sizes of articles recognized as a cigar in the trade.

The record is voluminous and there is sharp conflict between the testimony upon the part of the importers and the Government as to every material issue. The burden of proof was upon the importers to establish by a convincing preponderance of the evidence, whatever their legal theory, all the material allegations of their protest; but, upon every such material issue they were met by conflicting and contradictory evidence upon behalf of the Government. Upon this record the board found against the importers. The facts adduced

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were well within either claimed rule of decision, and their concluding finding is amply supported by evidence in the record.

The rule in such cases is well established. Early in the history of this court, United States *v.* Riebe (1 Ct. Cust. Appls., 19; T.D.30776), the following doctrine was announced:

> We think the proper practice is analogous to that which obtains on appeals in equity cases in the State or Federal courts. That rule has been stated in various ways in the different courts, but the courts all recognize the better opportunities of a trial court to judge of the credibility of witnesses, and hesitate for this reason to disturb the conclusion reached by the trial court. The rule as stated in the Blankensteyn case (56 Fed., 474) is as follows:
>
> The Circuit Court should not undertake to disturb the findings of the board upon doubtful questions of fact, and especially as to questions of fact which turn upon the intelligence and credibility of witnesses who have been produced before the board. But when the finding of fact is wholly without evidence to support it, or when it is clearly contrary to the weight of evidence, it is the duty of the Circuit Court to disregard it.
>
> We think this is a fair and correct statement of the rule which should govern us under the organic statute above quoted.

The Supreme Court concisely stated the rule in Manson *v.* Williams (213 U. S., 453, 457) as follows:

> The facts that we have mentioned seem to us to constitute some evidence that the relation between the brothers was a partnership by implied understanding until a corporation should be formed. It does not matter that it was not formally recognized or that they may not have used the name to themselves if that is the fair result of what they did understand and intend. We do not say that we necessarily should have come to this conclusion if the case had been tried before us in the first instance, but upon a pure question of fact the error, if there was one, is not so plain as to call upon us to depart from our usual rule.

See also Stone & Downer Co. *v.* United States (1 Ct. Cust. Appls., 513, 515; T. D. 31534); Carson *v.* United States (2 Ct. Cust. Appls., 105, 109; T. D. 31656); United States *v.* Wertheimer & Co. (2 Ct. Cust. Appls., 454; T. D. 32204); United States *v.* Germain (3 Ct. Cust. Appls., 321, 325; T. D. 32620).

In Lorsch & Co. *v.* United States (5 Ct. Cust. Appls., 93, 94–95; T. D. 34132) this court again applied this criterion, opinion by the presiding judge, stating:

> Importers, however, contend that as the general apprasier who wrote the opinion was not present when the testimony was taken the weight to be attached to the finding is thereby lessened. Conceding this to be in a measure true, yet as it appears that the testimony was taken before General Appraiser McClelland, who concurred in the opinion, we, in such circumstances, attach to the finding considerable weight, and in a doubtful case would give it controlling effect.

With the qualifications hereinbefore noted the decision of the Board of General Appraisers is *affirmed.*

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(T. D. 36463.)

Beaded chains or necklaces.

WOLFF & CO. *v.* UNITED STATES (No. 1619).

IMITATION JET BEAD NECKLACES, HOW DUTIABLE.

Necklaces substantially of imitation jet beads with imitation jet pendents are not dutiable as jewelry, under paragraph 356, tariff act of 1913, but as beaded articles, under paragraph 333.—United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), and American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259).

United States Court of Customs Appeals, March 28, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38507.

[Reversed.]

Comstock & Washburn (*Albert H. Washburn* and *George J. Puckhafer* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument December 9, 1915, by Mr. Washburn and Mr. Lawrence.]

Before SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The facts in this case are presented by stipulation as follows:

It is hereby stipulated and agreed by and between counsel for the importers and Assistant Attorney General for the United States that the merchandise returned by the appraiser as "bead necklaces or chains as jewelry" and assessed by the collector with duty at the rate of 60 per cent ad valorem under paragraph 356 of the tariff act of 1913, consists of necklaces or neck chains composed in chief value of beads valued at over 20 cents per dozen pieces, is correctly represented by the accompanying three samples.

It is further agreed that the protest be deemed submitted upon the aforesaid stipulation.

The Board of General Appraisers overruled the protest, holding the merchandise to be "commonly known as jewelry." The importers appealed, maintaining, among other claims deemed immaterial, that the articles are properly dutiable as beaded articles under the provisions of paragraph 333 of the tariff act of 1913.

The articles are, in fact, substantially entirely of imitation jet beads with imitation jet pendents.

Precise articles were under consideration by this court in United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) and American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259). For the reasons stated in and upon the authority of those two decisions, the decision of the Board of General Appraisers herein is *reversed.*

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(T. D. 36464.)

Parabolic mirrors.

GENERAL ELECTRIC CO. *v.* UNITED STATES (No. 1625).

1. PLEADING—PROTEST, SUFFICIENCY OF.

A protest is not rendered insufficient by claiming at the wrong rate under paragraph 103, tariff act of 1909, which taxes mirrors of different sizes at different rates. The record shows the sizes of the mirrors and, the report of the official gauger being presumed to do so, there was sufficient before the collector for proper liquidation.

2. METAL FRAMES OF PARABOLIC MIRRORS, HOW DUTIABLE.

Metal frames in which parabolic mirrors are set are dutiable as metal articles or wares not specially provided for under paragraph 199, tariff act of 1909.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, Abstract 35081 (T. D. 34279) and Abstract 38196.

[Modified.—The opinion is on application for rehearing, the decision having been rendered March 28, 1916, and not published.]

McLaughlin, Russell, Coe & Sprague and *Sharretts, Coe & Hillis* (*R. H. Hillis* and *Edward P. Sharretts* on the brief) for appellant.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

[Oral argument February 15, 1916, by Mr. Sharretts and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This case was decided by this court March 28, 1916, and upon petition by the Government reargument was ordered. The court adheres to the conclusion reached in the former decision, and adopts this as the opinion in the case.

The merchandise is parabolic mirrors. It is identical with the merchandise the subject of decision by this court in General Electric Co. *v.* United States (5 Ct. Cust. Appls., 528; T. D. 35176). The court therein held that such merchandise was properly dutiable under the provisions of paragraphs 103 and 104 of the tariff act of 1909. Upon the hearing before the Board of General Appraisers the board overruled these protests upon the ground that there was no proof sustaining the precise allegations made. The record in General Electric Co. *v.* United States (5 Ct. Cust. Appls., 528; T. D. 35176) was incorporated as a part of the record in this case. There is in this case all the proofs in that and more. The insufficiency of the protest in that case was urged upon the argument but not sustained by the court. The protests, which are alike in material particulars and are herein conceded to be sufficient, read as follows:

We hereby protest against the rate and amount of duty charged by you on certain reflectors assessed by you at 60 per cent.

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The ground of our objection is that the said reflectors are properly dutiable at 11 cents per square foot and 5 per cent ad valorem under paragraphs 103 and 104, and if the said reflectors have metal frames attached to them the said frames are dutiable at the rate of 45 per cent ad valorem under paragraph 199 by virtue of the proviso to paragraph 103. We claim further that if the said reflectors are not dutiable as above claimed that they are properly dutiable at 45 per cent ad valorem under paragraph 109 or at 10 per cent or 20 per cent under paragraph 480 of the tariff act of 1909.

Paragraphs 103 and 104 of the tariff act of 1909 are as follows:

103. Cast polished plate glass, silvered, cylinder and crown glass, silvered, and looking-glass plates, exceeding in size one hundred and forty-four square inches and not exceeding three hundred and eighty-four inches, eleven cents per square foot; above that, and not exceeding seven hundred and twenty square inches, thirteen cents per square foot; all above that, twenty-five cents per square foot: *Provided*, That no looking-glass plates or plate glass, silvered, when framed, shall pay a less rate of duty than that imposed upon similar glass of like description not framed, but shall pay in addition thereto upon such frames the rate of duty applicable thereto when imported separate.

104. Cast polished plate glass, silvered or unsilvered, and cylinder, crown, or common window glass, silvered or unsilvered, polished or unpolished, when bent, ground, obscured, frosted, sanded, enameled, beveled, etched, embossed, engraved, flashed, stained, colored, painted, ornamented, or decorated, shall be subject to a duty of 5 per centum ad valorem in addition to the rates otherwise chargeable thereon.

In overruling these protests the board stated:

It will be observed that the claim under paragraph 103 in all the protests is that the mirrors are dutiable at 11 cents per square foot, and that this rate only applies to such looking-glass plates as exceed in size 144 square inches and do not exceed 384 square inches, higher rates being provided for such as exceed those dimensions. We have no proof as to any of these mirrors that they exceed 144 square inches and are under 384 square inches in size; on the contrary, the testimony speaks of 24, 30, 36, 40, 60, and 62 inch mirrors, presumably meaning that they are of those diameters. A calculation will show that the smallest of these mirrors will very much exceed 384 square inches in size.

While we are clearly of opinion, in view of the General Electric case, *supra*, that this merchandise is properly dutiable under paragraphs 103 and 104, yet we can not hold the merchandise dutiable at the rate claimed in the protest unless we have proof that it is within the size covered by that rate.

Whether the issue be stated as one concerning the sufficiency of proof or as one concerning the insufficiency of a protest the considerations are the same. In the last analysis the question presented for decision to this court is, does proof of an importation of parabolic mirrors more than 384 square inches in size make a case within the provisions of a protest which in language is confined to the declared rate for and description of mirrors under 384 square inches in size? There is proof in the record of parabolic mirrors which fall for dutiable purposes under the provisions of paragraphs 103 and 104 of the tariff act of 1909. Indeed, if there were sufficient facts before the board to determine that the sizes of these mirrors were not such as were under 384 square inches it is difficult to understand how there was not sufficient evidence before the board to determine their exact

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size. And, if the protest as framed is sufficient to cover parabolic mirrors of any size, it follows *ex necessitate* that, the sizes of those imported being shown, there was sufficient proof in the record to support the allegations of the protest. But regardless of any deductions from the reasoning of the board the record itself concludes the fact that there is herein uncontradicted testimony as to the existence in this importation of parabolic mirrors and their exact sizes. The following are excerpts therefrom (Record, pp. 29 and 30):

Q. (By Mr. HILLIS.) Are you familiar with the invoices covering all these protests, covered by all these protests, with respect to which you are testifying this morning?—A. I have seen them; yes.

Q. Have you personally gone over them?—A. Yes, sir.

Q. How recently?—A. Within a week.

* * * * * * *

Q. No; the number of protests. Do you know how many protests you have filed?—A. Thirty-seven, I think.

Q. Have you seen the invoices covered by these protests?—A. I have.

Q. Are you personally familiar with the merchandise which was covered by those protests?—A. I am, sir.

Q. With respect to the mirrors that are imported in frames, have you made any examination of the invoices with a view of determining just which mirrors were imported in frames?—A. I have.

Q. Have you any memorandum with you?—A. I have. (Witness produces memorandum.)

Q. Was this memorandum made by yourself?—A. It was.

Q. From what source was the information derived?—A. From the invoices.

Q. Do you know of your own personal knowledge whether this list represents each and every mirror imported in a frame?—A. Yes.

Q. And the values of the mirrors?—A. Yes.

Q. I ask you to look at the first item on that list. Will you please read it?—A. Entry 330, on the vessel *Blucher*, 1/60 in frames.

Q. The next one.

* * * * * * *

Mr. LAWRENCE. I am objecting to him reading from something he has not offered. If the paper contains data covering these protests, I have no objection to it being received.

General Appraiser SULLIVAN. We do not want the paper. If that refreshes his memory, let him testify from it.

Q. Please read the second item.—A. Entry 621, steamer *Batavia*, 4/60-inch mirrors in frames. Entry 662, steamer *Pennsylvania*, 6/60-inch mirrors in frames. Entry 763, steamer *Bulgaria*, 6/60-inch frames.

General Appraiser SULLIVAN. Is that all?

The WITNESS. That is a complete list, sir.

Q. How many 60-inch mirrors are on that slip?—A. Seventeen.

Q. Those are imported in frames?—A. They were.

Q. Do you know the value of the frames?—A. 640 marks each. I will state there that I gave the diameter in inches.

Does a protest of the confined language of this one, which counts upon paragraphs 103 and 104 of the tariff act of 1909, cover this merchandise, and is the proof of such merchandise in the case proof within the terms of such a protest? We think the question is *stare*

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decisis in this court. In Carter *v.* United States (1 Ct. Cust. Appls., 64, 69; T. D. 31033), opinion by the presiding judge, it is said:

> If the purpose of this notice is to apprize the collector of what the claim of the importer is, and if technical nicety is not to be insisted upon, we think that where the importer protests against the rate assessed and at the same time points out provisions under which he claims the article to be dutiable with sufficient clearness so that the collector may *by mere computation or examination of the goods* determine their classification, he has complied with the statute in all essential respects.

In United States *v.* Stirn (5 Ct. Cust. Appls., 140; T. D. 34191) the point was more precisely similar. That case concerned a protest under paragraph 397 of the tariff act of 1909 which declared different rates of duty upon silk yarns of different numbers. It alleged that the yarns in question were 250/2 ply. No testimony was introduced before the board on this point. Upon the appraiser's reexamination of the merchandise it was disclosed that the size of the yarns was 261 and 269, and there were no yarns in the case 250/2, as literally claimed in the protest.

This court said:

> If no size number had been mentioned it could not be urged that the collector was thereby misled, and we do not think the fact that an erroneous one was claimed has that effect. The protest as a whole shows that the importers had the correct provision of law in mind when it was filed, and by it the collector's attention was thereto directed.
>
> * * * * * * *
>
> The importers here have sustained their claim that the yarns were dutiable according to their size number in a dyed condition, and the protest is sufficient to entitle them to reliquidation accordingly.

See also Michelin Tire Co. *v.* United States (6 Ct. Cust. Appls., 283; T. D. 35507).

We therefore are of the opinion and hold that there is proof in this record of an importation of parabolic mirrors and of the sizes thereof; that said mirrors are dutiable under the provisions of paragraphs 103 and 104 of the tariff act of 1913; and that, therefore, the decision of the Board of General Appraisers should be and is *reversed*. The board's decision as to frames is *affirmed*.

(T. D. 36465.)

Necklaces of beads.

AMERICAN BEAD CO. *v.* UNITED STATES (No. 1601). WOLFF & CO. *v.* UNITED STATES (No. 1619).

1. APPRAISEMENT.

   An appraisement is *in no sense a classification.*

2. EVIDENCE—PRESUMPTION—USAGE.

   Presumptively, commercial and common usage are the same.

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3. APPRAISER'S OPINIONS AND LEGAL CONCLUSIONS.

The function of the appraiser is to find facts, and his opinions and legal conclusions are not binding.

4. EVIDENCE—STIPULATION OF FACT.

Parties' stipulations of fact bind the court.

5. JEWELRY—STARE DECISIS.

That bead necklaces are not necessarily jewelry and that articles of personal adornment only are not necessarily jewelry are *stare decisis*.

6. AMBER—TARIFF ACTS OF 1909 AND 1913.

The jewelry paragraph (448), tariff act of 1909, embraced imitation amber; the jewelry paragraph (356), tariff act of 1913, does not.

United States Court of Customs Appeals, May 23, 1916.

APPLICATIONS for rehearing, decision in 1601 rendered March 9, 1916 (7 Ct. Cust. Appls., —; T. D. 36259), and that in 1619, March 28, 1916 (7 Ct. Cust. Appls., —; T. D. ——).

[Denied.]

Before SMITH, BARBER, DE VRIES, and MARTIN, Judges.

Per curiam: The case of H. Wolff & Co. *v.* United States, *supra*, having been decided by citation only of earlier decisions of the court deemed precisely controlling, and a petition for reargument having been filed, the court deems more extended observations appropriate. That petition for rehearing lays particular stress upon the appraiser's report upon the protest, wherein it is stated that the articles "are *in the opinion* of this office *commercially* known as jewelry." This is followed by the claim of the Government that this was a finding by the appraiser which was binding upon the Board of General Appraisers.

The original and only appraisements of these goods are stamped upon the invoices, as required by the Customs Regulations of 1908 (arts. 1514 and 1515), which, in so far as pertinent, read:

ART. 1514. *Duties generally.*— * * * In order to assist the collector in the assessment of duty, the appraiser describes the merchandise in such terms as will enable the collector to classify the same for duty. * * *

ART. 1515. *Classification a function of collectors.*—It is *in no case* the function of appraising officers to classify imported merchandise, that duty being vested by law in the collector of customs, the chief business of the appraiser under the statute being the ascertainment of the market value of imported merchandise.

In this case the notations upon the invoices uniformly were:

Bead necklaces or chains. As jewelry, 60 per cent—356—F.

The letter "F" is, of course, the examiner's initial. On the reverse of the invoice are notations as follows:

Merchandise as noted. Date of return, 12/3/14. * * * Assistant appraiser, Fred Kuenzli. Approved, John K. Sague, appraiser.

The invoice is stamped "Liquidated March 17, 1915." "Increase paid Mar. 19, 1915." The *appraisement* in this case, therefore, was

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made on December 3, 1914, and the *decision* of the collector on March 17, 1915.

It is equally pertinent that the appraiser, in accordance with the regulations, *advised* the collector that the classification of this merchandise should be "as jewelry," without any advice whatsoever as to whether it was either or both commonly or commercially known as jewelry. Nor can the appraiser amend this return as to value once it is lodged with the collector save for clerical error. Customs Regulations of 1908 (art. 864).

On April 9, 1915, the protest was filed against this decision of the collector made March 17, 1915. Thereupon the protest against the decision of the collector, based upon the aforesaid appraisement made December 3, 1914, was, under the regulations, forwarded to the appraiser for his report. On June 12, 1915, the report upon this protest was made by the appraiser to the collector:

> The merchandise consists of necklaces or neck chains composed in chief value of beads, valued over 20 cents per dozen pieces. *Being articles of personal adornment*, they are, *in the opinion* of this office, *commercially* known as jewelry and were so returned, at 60 per cent ad valorem, under paragraph 356, act of 1913, in accordance with department's instructions in T. D. 34511.
>
> Respectfully,
>
> JOHN K. SAGUE, *Appraiser*.

Thereupon, in accordance with the Customs Regulations of 1908, article 1074, the collector forwarded all of the papers with his legally required *letter of transmittal* to the Board of General Appraisers, reciting therein:

> Report of the collector—June 19, 1915. Respectfully referred to the Board of United States General Appraisers for decision.
>
> The merchandise referred to herein was assessed with duty in accordance with the advisory classification returned by the appraiser *on the invoice*, and more particularly described in the special report herewith. * * *
>
> DUDLEY FIELD MALONE, *Collector*.

Wherefore, it is apparent that at the time of the decision of the collector there was no classification or attempted classification, advisory or otherwise, before him by the appraiser that this merchandise was commercially and not commonly known as jewelry. A literal examination of the letters of transmittal and reports submitted without reference to the invoices shows this to be true. There was an advisory classification that they were "jewelry," which included both that commonly or commercially so known. The collector reported to the board long after his decision had been made, under the regulations requiring him to give the "reason" for his decision, article 1074, *supra*, that the merchandise was assessed with duty in accordance with the advisory classification returned by the appraiser "on the invoice," and more particularly *described* in the special report herewith. The collector acted upon the advisory classification *upon*

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the invoice and not upon the answer to the protest made long after his decision. He stated that the goods were more particularly "described" in the special report of the appraiser, but that description is not had by that part of his report stating that they were "commercially known as jewelry," but by that part thereof relating to their physical characteristics, to wit, "necklaces or neck chains composed in chief value of beads, valued over 20 cents per dozen pieces." If we ask to describe an article of personal adornment, we are afforded no light by a statement that it is commonly or commercially known as jewelry, but we are enlightened by the reply that it consists of "necklaces or neck chains composed in chief value of beads, valued over 20 cents per dozen pieces."

The remaining portion of the appraiser's answer to the protest does not consist of a "description" of the goods, but assigns his *reason for the appraisement* long after the appraisement was made and after it was acted upon by the collector. Nor does this further part of the answer to the protest assume to make a finding of, or to report evidence of, or to declare the existence of, as a fact, the commercial designation of these articles, but states that the *reason* why the appraiser so considered them was that "*being articles of personal adornment*, they are" (not because so known in trade and commerce, nor because so known at the time of the enactment of the tariff law), but solely because they are "*in the opinion* of this office commercially known as jewelry." This is not the statement of a fact found, but of a conclusion of law based upon the stated fact that the described articles were for personal adornment. Further it appears that the appraiser so advised the collector, not by reason of his own finding or conclusion but owing and in obedience to the orders of superior authority as by him applied, to wit, "in accordance with department's instructions in T. D. 34511." This court has ruled against this declaration of law by the appraiser that *every* article of personal adornment is jewelry.

The collector made no express *finding* upon the subject in his *decision*. In his letter of transmittal, June 19, 1915, long after decision was rendered, he did not advise the board whether he had adopted as the basis of his decision the fact that the goods were commonly or commercially, or both, known as jewelry. No doubt he was aware that the Supreme Court of the United States in United States *v.* Morrison (179 U. S., 456), and this court in United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), and other courts had declared that certain string beads and bead necklaces were not jewelry, and therefore declined to hold that everything which was an article of personal adornment was necessarily jewelry, but viewed that "opinion" of the appraiser as not binding upon him either under the regulations, article 1515, or under the decisions of the Supreme Court. Marriott

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v. Brune *et al.* (9 How., 50 U. S., 619, 634); Earnshaw *v.* Cadwalader (145 U. S., 247, 249).

Commercial designation is a fact to be proved. Maddock *v.* Magone (152 U. S., 368). In the absence of competent proof of that fact the presumption is, and the collector was warranted in so assuming, that the commercial and common usage as to the articles were the same. Swan *v.* Arthur (103 U. S., 597, 598); Schmieder *v.* Barney (113 U. S., 645, 648). Likewise, the collector may have viewed that, regardless of commercial designation, a long course of legislation had indicated that Congress did not intend to rate the articles for duty according to their commercial name. De Forest *v.* Lawrence (13 How., 54 U. S., 274); United States *v.* Morrison (179 U. S., 456, 459).

So that the matter was thus presented to the board without any finding of fact save and except the implied finding of the collector that the goods were either commonly or commercially known as jewelry.

Furthermore, the facts of this case have been otherwise settled. The Government and counsel for the importers seem to have recognized this unsatisfactory situation and entered into a stipulation, thereby substituting said stipulation for all facts shown in the record. That stipulation reads:

> It is hereby stipulated and agreed by and between counsel for the importers and Assistant Attorney General for the United States that the merchandise returned by the appraiser as "bead necklaces or chains as jewelry" and assessed by the collector with duty at the rate of 60 per cent ad valorem under paragraph 356 of the tariff act of 1913, consists of necklaces or neck chains composed in chief value of beads valued at over 20 cents per dozen pieces, is correctly represented by the accompanying three samples.
>
> *It is further agreed that the protest be deemed submitted upon the aforesaid stipulation.*

The only other evidence before the board and this court save that stipulated is the agreed samples of the necklaces themselves. Upon this stipulation and these agreed samples the board found that the goods were "commonly" known as jewelry. The board evidently found no sufficient evidence to hold them commercially known as jewelry and observed the presumption that in the absence of such evidence the common and commercial usage are the same. They found within the stipulation and within the implied findings of the collector. The case came before this court upon the stipulation and samples, and this court upon the authority of its previous decisions rendered decision. This is a stipulation as to the *facts* upon which the case shall be submitted. This court has recently tersely declared that a stipulation of facts was binding upon the board and upon this court, as has ever been held by all courts. Salomon & Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36255).

The decision herein accords with and follows three previous decisions of this court and one of the Supreme Court (the latter regardless of commercial designation shown in the case). The issue therefore

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has become *stare decisis*. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506); United States *v.* Sheldon & Co. (2 Ct. Cust. Appls., 283; T. D. 32034); Loewenthal & Co. *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464); United States *v.* Morrison (179 U. S., 456, 459).

The foregoing observations as to express and implied findings of the collector, and the effect thereupon of the reasons assigned by the appraiser for his classification in his report upon the protest, are in principle equally applicable to the petition for reargument filed by the Government in American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259), and need not here be repeated.

In the latter case, however, it is urged that there is a conflict between this decision and that of American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259) and United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509; T. D. 35166), in that certain items in the latter were in fact imitations of amber, and were held to be imitation precious stones for use in the manufacture of jewelry. It would seem sufficient to call attention to the fact that the opinion here in question, as in that case, endeavored to confine jewelry and imitation jewelry to those materials *named* in paragraph 356 as jewelry materials. That was the gist of the decision in American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259) and United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509; T. D. 35166). Paragraph 448, however, of the tariff act of 1909, under which the latter decision was rendered, in enumerating the materials out of which jewelry as therein provided for might be made, used the words "diamonds, pearls, cameos, coral, or *other* precious or semiprecious stones, or *imitations* thereof." Under that language, amber being in fact classed as a precious stone (see Standard Dictionary, Twentieth Century Edition, "Stones, precious"), came within the classification of precious stones, wherefore imitations of amber were imitation precious stones. Paragraph 356 of the present act, however, under which this decision was rendered, differs in enumerating the jewelry materials as therein provided and speaks of "precious or semiprecious stones, pearls, cameos, coral, or *amber*, or with imitation precious stones or imitation pearls." The mention of "amber" without including imitations thereof seems to confine this paragraph to genuine amber only. The word "amber" did not appear in the amended act, 1909. It was deliberately inserted in the amending act of 1913, and the surrounding and corresponding modifying language carefully redisposed so that by no construction can imitation amber be read into the paragraph as one of its members. The logical and only legal effect that can be accorded this deliberate action of Congress was to withdraw imitation amber and imitation amber articles from this paragraph. The difference in the decisions, therefore, is rested in the difference in the language of the acts.

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The petition for reargument in each of the foregoing cases is *denied*.

MONTGOMERY, Presiding Judge, not having sat in the original hearings, took no part herein.

(T. D. 36466.)

Angora goatskins.

The hair on all kinds of Angora goatskins will continue to be assessed with duty at the rate of 15 per cent ad valorem under paragraph 305, tariff act of 1913.

TREASURY DEPARTMENT, *June 6, 1916.*

SIR: I have to call your attention to the decision of the Board of United States General Appraisers of March 24, 1916, G. A. 7878 (T. D. 36271), wherein certain so-called Cape Angora goatskins, the hair on which had been assessed with duty at the rate of 15 per cent ad valorem under paragraph 305 of the tariff act of October 3, 1913, were held by the board to be free of duty.

Owing to the unsatisfactory nature of the record in the case, no appeal was taken from the decision in question. The Assistant Attorney General, however, has advised the department that a later case was taken up in which it appears there is a more complete record.

Pending a judicial determination of the question, you will continue to assess duty on the hair on all Angora goatskins at the rate of 15 per cent ad valorem under paragraph 305 of the tariff act of October 3, 1913.

Respectfully, WM. P. MALBURN,
(105140.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36467.)

Customs-inspection stamps on cigars, etc.

Customs-inspection stamps not to be affixed to cigars, etc., imported in passengers' baggage—Article 361 of the Customs Regulations of 1915 amended.

TREASURY DEPARTMENT, *June 7, 1916.*

To collectors and other officers of the customs:

Hereafter the customs-inspection stamps prescribed by section 2804 of the Revised Statutes will not be affixed to the 50 cigars or 300 cigarettes or 3 pounds of smoking tobacco allowed adult passengers under article 361 of the Customs Regulations of 1915. As to cigars in excess of 50 and up to 1,000 or cigarettes in excess of 300 and up to 3,000, they will be stamped only with the internal-revenue stamps, which stamps while in the possession of the customs officers and

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before being sold to passengers will be stamped across the face with a rubber stamp bearing the legend "United States customs; imported in passengers' baggage." Customs officers handling passengers' baggage will provide themselves with the necessary rubber stamps for this purpose.

Article 361 of the Customs Regulations of 1915 is amended accordingly.

(93120.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36468.)

Animals for breeding purposes.

T. D. 31147 of December 27, 1910, relative to the importation of animals for breeding purposes and the evidence required on entry amended to provide for the free entry on reimportation of animals originally admitted free.

TREASURY DEPARTMENT, *June 7, 1916.*

To collectors and other officers of the customs:

Following the recommendation of the conference of collectors to facilitate the free entry under paragraph 397 of the tariff act of October 3, 1913, of animals reimported in the district of original importation, regardless of the district from which taken, T. D. 31147 is hereby amended by the insertion of the following paragraph:

"When animals which were originally admitted free of duty under paragraph 397 are exported, and then reimported and duly entered in the district of original importation, they may be passed free of duty on their identity and the citizenship of the importer being established to the satisfaction of the collector by an affidavit of the importer or his agent, without requiring the reproduction of the evidence filed on original entry."

(67950.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36469.)

Contracts for the care of seamen, etc.

TREASURY DEPARTMENT,
UNITED STATES PUBLIC HEALTH SERVICE,
Washington, June 8, 1916.

To accounting officers, disbursing agents, and others concerned:

1. The following contracts for the care of seamen and other beneficiaries of the United States Public Health Service during the fiscal year ending June 30, 1917, are published for the information of accounting officers of the Treasury Department, disbursing agents,

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commissioned medical officers, acting assistant surgeons, and customs officers. This circular is to be regarded as official notification of the acceptance of the proposals made by the parties named herein, and must be cited as "T. D. 36469," dated June 8, 1916, on all bills incurred under the same as authority for the expenditures. The bidders named in this circular will be required to carry out the terms of their proposals in all details as set forth therein.

2. Ambulance service, when required for the transfer of patients, may be obtained under authority contained in paragraph 649, regulations of said service, unless such accommodation is provided under annual contract.

3. Charges will be allowed for the day of admission of a patient to hospital treatment, but not for the day of discharge or death. The right is reserved by the Secretary of the Treasury to terminate any contract whenever the interests of the Government require it. All relief must be furnished in accordance with the regulations of the United States Public Health Service; and, except as provided in paragraphs 446, 450, and 461 of said regulations, no allowance will be made for expenditures incurred at any place not named in this circular.

4. Upon the admission of a patient to hospital treatment at a relief station, suffering with a disease or injury which, in the opinion of the physician in charge, will require more than 20 days' treatment in hospital, and if it appears that the patient can bear transportation without injury and without the services of an attendant, the officer issuing the permit shall at once request authority from the proper officials to transfer such patient to the nearest marine hospital, unless such authority be already given by this circular in the paragraph relating to the work at the particular station, in which case the transfer shall be made at once.

5. Vouchers for medicines furnished by local apothecaries to patients of said service upon the requests of officers in charge of third-class relief stations should cite thereon paragraphs 468 and 649, regulations, as authority for the expenditures. At stations in charge of customs officers, the authority cited on vouchers for medicines furnished patients by local apothecaries should be paragraphs 649 and 660, Regulations of the United States Public Health Service.

6. The attention of officers is called to the necessity for discharging patients promptly upon the termination of the necessary hospital treatment without awaiting the expiration of the period authorized.

7. The term "contagious diseases" wherever occurring in this circular includes only those diseases that, under municipal regulations, are required to be treated in a special hospital for contagious diseases. A voucher for the care of a patient suffering with a contagious disease

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should state on its face that the disease for which the patient was treated is considered contagious under municipal regulations.

A. H. GLENNAN,
Acting Surgeon General.

Approved:
BYRON R. NEWTON,
Assistant Secretary.

Albany, N. Y.—The medical attendance to be furnished by an acting assistant surgeon; the Albany Hospital to furnish patients suffering with both contagious and noncontagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient, and to furnish ambulance service at the rate of $2 per patient; Tebbutt & Palmer to provide for the burial of deceased patients at the rate of $40 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New York, N. Y.

Ancon and Cristobal, Panama Canal Zone.—The Ancon and Colon hospitals to furnish patients of the service with medical attendance, nursing, quarters, subsistence, and necessary medicines, at the rate of $1.50 a day for each patient, and to provide for the burial of deceased patients at the rate of $21.25 for each burial, or for the cremation of deceased patients, including container for the ashes, at the rate of $11 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the marine hospitals at either New Orleans, La., or Key West, Fla.

Ashland, Wis.—The medical attendance to be furnished through the office of the deputy collector of customs; J. M. Dodd to furnish quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $3 and $2 a day, respectively, for each patient, and to furnish ambulance service at the rate of $2 per patient; William Pascoe to provide for the burial of deceased patients at the rate of $15 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Ashtabula, Ohio.—The medical attendance to be furnished by an acting assistant surgeon; the Ashtabula General Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, at the rate of $2 a day

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for each patient; Gregory Askew & Co. to furnish ambulance service at the rate of $1 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Cleveland, Ohio.

Astoria, Oreg.—The medical attendance to be furnished by an acting assistant surgeon; St. Mary's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.25 a day for each patient; E. B. Hughes to provide for the burial of deceased patients at the rate of $25 for each burial; John Carno to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at San Francisco, Cal.

Apalachicola, Fla.—The medical attendance to be furnished through the office of the deputy collector of customs; Dr. Jos. H. Murrow to furnish quarters, subsistence, medical attendance, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $3 and $2 a day, respectively, for each patient, and to furnish ambulance service at the rate of $1 per patient; Cotter & Sangree to provide for the burial of deceased patients at the rate of $50 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Mobile, Ala.

Baltimore, Md.—Hospital patients to be cared for in the United States marine hospital.

Bangor, Me.—The medical attendance to be furnished by an acting assistant surgeon; Adelbert Chandler to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; Ralph B. White to provide for the burial of deceased patients at the rate of $12 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Portland, Me.

Bay City, Mich.—The medical attendance to be furnished by an acting assistant surgeon; the Bay City Hospital Association to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both con-

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tagious and noncontagious diseases, at the rates of $15 and $8 per week, respectively, for each patient; and to furnish ambulance service at the rate of $3 per patient; W. S. Hyatt to provide for the burial of deceased patients at the rate of $25 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Detroit, Mich.

Beaufort, N. C.—The medical attendance to be furnished through the office of the deputy collector of customs. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospitals at Baltimore, Md., or Savannah, Ga.

Bellingham, Wash.—The medical attendance to be furnished by an acting assistant surgeon; St. Luke's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.25 a day for each patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Port Townsend, Wash.

Boothbay Harbor, Me.—The medical attendance to be furnished by an acting assistant surgeon; St. Andrew's Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $2 and $1.25 a day, respectively, for each patient; Pierce & Brewer to provide for the burial of deceased patients at the rate of $18 for each burial and to furnish ambulance service at the rate of $2 per patient Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Portland, Me.

Boston, Mass.—Hospital patients to be cared for in the United States marine hospital at Chelsea, Mass.

Bridgeport, Conn.—The medical attendance to be furnished through the office of the collector of customs; St. Vincent's Hospital to furnish quarters, subsistence, medical attendance, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rate of $1 a day for each patient; Hawley & Wilmot to provide for the burial of deceased patients at the rate of $16 for each burial; Rourke & Boucher to furnish ambulance service at the rate of $5 per patient. Patients requiring extended hospital treatment shall,

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if able to bear transportation without injury, be transferred to the United States marine hospital at New York, N. Y.

Brunswick, Ga.—The medical attendance to be furnished by an acting assistant surgeon; the Brunswick Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; Baldwin-Edge Co. to provide for the burial of deceased patients at the rate of $14.50 for each burial; Findley's Express Delivery to furnish ambulance service at the rate of $2 and $5 a patient, during the day and night, respectively; the Glynn County Bank to furnish office quarters for the sum of $15 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Savannah, Ga.

Buffalo, N. Y.—Hospital patients, other than those suffering with contagious diseases, to be cared for in the United States marine hospital; the city health commissioner to furnish patients suffering with contagious diseases with quarters, subsistence, medical attendance, nursing, and necessary medicines, except serums, vaccines antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient.

Burlington, Iowa.—The medical attendance to be furnished by an acting assistant surgeon; the Mercy Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.25 a day for each patient; Burnett-Hilleary Co. to provide for the burial of deceased patients at the rate of $40 for each burial, and to furnish ambulance service at the rate of $2 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at St. Louis, Mo.

Cairo, Ill.—The medical attendance to be furnished by a commissioned medical officer; St. Mary's Infirmary to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; E. A. Burke to furnish ambulance service at the rate of $2 per patient; Karcher Bros. to provide for the burial of deceased patients at the rate of $13.50 for each burial; W. P. Halliday estate to furnish office quarters for the sum of $42.50 per month; R. E. Barrows to furnish X-ray service at the rate of $5 per developed plate; the Home Telephone Co. of Cairo to furnish telephone service for the sum of $51 per annum. Patients

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requiring extended hospital treatment shall, if able to bear transportation, be transferred to the marine hospital at St. Louis, Mo.

Cambridge, Md.—The medical attendance to be furnished by an acting assistant surgeon; the United Charities Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1 a day for each patient; LeCompte & Harper to provide for the burial of deceased patients at the rate of $15 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospital at Baltimore, Md.

Cedar Keys, Fla.—The medical attendance to be furnished by an acting assistant surgeon.

Charleston, S. C.—The medical attendance to be furnished by a commissioned medical officer; the Roper Hospital to furnish quarters, subsistence, nursing, ambulance service, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases, except smallpox, at the rates of $2.50 and $1.50 a day, respectively, for each patient, and to care for smallpox patients at the rate of $3.50 a day for each patient; John McAlister to provide for the burial of deceased patients at the rate of $12 for each burial; the Jet White Laundry to launder six office towels per week at the rate of 45 cents a month; the Southern Bell Telephone & Telegraph Co. to furnish telephone service at the rate of $60 per annum. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Savannah, Ga.

Chicago, Ill.—Hospital patients to be cared for in the United States marine hospital.

Cincinnati, Ohio.—The medical attendance to be furnished by an acting assistant surgeon; the city of Cincinnati to furnish quarters, subsistence, ambulance service, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rate of $2.15 a day for each patient. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospital at Louisville, Ky.

Cleveland, Ohio.—Hospital patients to be cared for in the United States marine hospital.

Crisfield, Md.—The medical attendance to be furnished through the office of the deputy collector of customs; the General and Marine Hospital to furnish patients not suffering with contagious diseases

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with quarters, subsistence, medical attendance, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient, and ambulance service at the rate of $1 per patient; J. S. Lawson to provide for the burial of deceased patients at the rate of $30 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

Chattanooga, Tenn.—The medical attendance to be furnished through the office of the deputy collector of customs; the Baroness Erlanger Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2.25 a day for each patient; Harry E. Chapman & Co. to provide for the burial of deceased patients at the rate of $27 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Memphis, Tenn.

Delaware Breakwater, Del.—Hospital patients to be cared for in the United States quarantine hospital and the appropriation for quarantine maintenance, 1917, to be reimbursed therefor at the rate of $2 a day for each patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

Detroit, Mich.—Hospital patients, other than female patients, to be cared for in the United States marine hospital; the Grace Hospital to furnish female patients of the service not suffering with contagious diseases with quarters, subsistence, medical attendance, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient.

Duluth, Minn.—The medical attendance to be furnished by an acting assistant surgeon; St. Mary's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; the city of Duluth to furnish patients suffering with contagious diseases with quarters, subsistence, medical attendance, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; Grady & Hargan to provide for the burial of deceased patients at the rate of $15 for each burial; Edward W. Fahey to furnish office quarters

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at the rate of $15 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Eastport, Me.—The medical attendance to be furnished by an acting assistant surgeon; Bibber & Flagg to provide for the burial of deceased patients at the rate of $21 for each burial; Charles O. Gardner to furnish ambulance service at the rate of $2 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Portland, Me.

Edenton, N. C.—The medical attendance to be furnished by an acting assistant surgeon; L. F. Ziegler to provide for the burial of deceased patients at the rate of $15 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

Elizabeth City, N. C.—The medical attendance to be furnished by an acting assistant surgeon; the Elizabeth City Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $2 and $1.50 a day, respectively, for each patient; F. H. Ziegler to provide for the burial of deceased patients at the rate of $25 for each burial; H. D. Walker to furnish office quarters for the sum of $10 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

El Paso, Tex.—Patients en route to Fort Stanton, N. Mex., will be furnished medical attendance by an acting assistant surgeon, who will also provide them with necessary meals and lodging during their detention at that point.

Erie, Pa.—The medical attendance to be furnished by an acting assistant surgeon; the Hamot Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.75 a day for each patient; the board of health to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $3 a day for each patient; A. Brugger & Sons to provide for the burial of deceased patients at the rate of $14 for each burial; the Erie Taxicab Co. to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall,

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if able to bear transportation without injury, be transferred to the United States marine hospital at Cleveland, Ohio.

Escanaba, Mich.—The medical attendance to be furnished by an acting assistant surgeon; St. Francis Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $2 and $1.50 a day, respectively, for each patient; D. A. Oliver to provide for the burial of deceased patients at the rate of $12.75 for each burial; John Haring to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred ot the United States marine hospital at Chicago, Ill.

Eureka, Cal.—The medical attendance to be furnished by an acting assistant surgeon; the Union Labor Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $5 and $2 a day, respectively, for each patient; Cooper & Connick to provide for the burial of deceased patients at the rate of $50 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at San Francisco, Cal.

Evansville, Ind.—Hospital patients to be cared for in the United States marine hospital.

Fernandina, Fla.—The medical attendance to be furnished by an acting assistant surgeon; A. G. Webster to furnish quarters, subsistence, and nursing to patients suffering with both contagious and noncontagious diseases at the rates of $2.50 and $1.50 a day, respectively, for each patient; R. M. Henderson to provide for the burial of deceased patients at the rate of $17 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Savannah, Ga.

Fort Stanton, N. Mex.—A sanatorium maintained for the care and treatment of patients suffering with tuberculosis. Medical officers in charge of station should apply to the Surgeon General for authority to transfer suitable cases thereto for treatment. The medical officer in charge of the sanatorium is authorized to arrange for the furnishing of necessary meals and lodgings to arriving patients at Carrizozo, N. Mex., the New Mexico Insane Asylum Hospital to care for insane patients at the rate of $30 per month; the Roswell Auto Co. to fur-

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nish patients transportation from Carrizozo to Fort Stanton, N. Mex., at the rate of $2.50 each.

Gallipolis, Ohio.—The medical attendance to be furnished by an acting assistant surgeon; W. L. Guthrie to furnish quarters, subsistence, and nursing to patients suffering with both contagious and noncontagious diseases at the rates of $2 and $1.25 a day, respectively, for each patient, and to furnish office quarters for the sum of $12 per month; G. J. Wetherholt to provide for the burial of deceased patients at the rate of $13 for each burial; Guy Walker to furnish ambulance service at the rate of $1 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Louisville, Ky.

Galveston, Tex.—The medical attendance to be furnished by a commissioned medical officer; John Sealy Hospital to furnish quarters, subsistence, nursing, service of interne, specialists on hospital staff, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $3 and $1.50 a day, respectively, for each patient; F. P. Malloy & Son to provide for the burial of deceased patients at the rate of $20 for each burial and to furnish ambulance service at the rate of $1 per patient east of Twenty-seventh Street and at the rate of $2 per patient west of Twenty-seventh Street; the Southwestern Telegraph & Telephone Co. to furnish telephone service at the rate of $6 per month; the Rex Steam Laundry Co. to launder office towels at the rate of 12 cents a dozen. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New Orleans, La.

Georgetown, S. C.—The medical attendance to be furnished by an acting assistant surgeon; Mrs. R. C. Griggs to furnish white patients suffering with contagious and noncontagious diseases with quarters, subsistence, and nursing at the rate of $2 a day for each patient; M. Singleton to furnish colored patients suffering with contagious and noncontagious diseases with quarters, subsistence, and nursing at the rate of $1.50 a day for each patient; the Curtis-Powell Co. (Inc.) to furnish ambulance service at the rate of $1 per patient; A. M. Farrelly Undertaking Co. to provide for the burial of deceased patients at the rate of $33 for each burial; Geo. D. Anderson to furnish office quarters for the sum of $15 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Savannah, Ga.

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Gloucester, Mass.—The medical attendance to be furnished by an acting assistant surgeon; the Addison Gilbert Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1 a day for each patient, and to furnish ambulance service at the rate of $2.50 per patient; George L. Browne to provide for the burial of deceased patients at the rate of $25 for each burial; Ford & Wass to furnish office quarters for the sum of $12 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Boston, Mass.

Government Hospital for the Insane, Washington, D. C.—Under act of Congress approved March 3, 1875, said hospital to furnish quarters, medical attendance, subsistence, nursing, and necessary medicines at the rate of $4.50 per week for each insane patient of the service admitted upon the order of the Secretary of the Treasury.

Grand Haven, Mich.—The medical attendance to be furnished by an acting assistant surgeon; Mrs. Thomas McCambridge to furnish quarters, subsistence, and nursing to patients suffering with both noncontagious and contagious diseases, except smallpox, erysipelas, and scarlet fever, at the rates of $1.50 and $2 a day, respectively, for each patient; Thomas Kiel to provide for the burial of deceased patients at the rate of $16 for each burial; John J. Boer & Son to furnish ambulance service at the rate of $1 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Green Bay, Wis.—The medical attendance to be furnished by an acting assistant surgeon; St. Vincent's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1 a day for each patient; Lefebore Furniture Co. to provide for the burial of deceased patients at the rate of $35 for each burial; Snavely Livery Transfer Co. to furnish ambulance service at the rate of $4 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Gulfport, Miss.—The medical attendance to be furnished by an acting assistant surgeon; the King's Daughters Hospital to furnish white patients not suffering with communicable or contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and

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other unusually expensive medicines, at the rate of $1 a day for each patient; the Lang Undertaking Co. to provide for the burial of deceased patients at the rate of $35 for each burial and to furnish ambulance service at the rate of $5 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospital at Mobile, Ala.

Hartford, Conn.—The medical attendance to be furnished through the office of the deputy collector of customs; St. Francis Hospital to furnish quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both noncontagious and contagious diseases at the rates of $1 and $2 a day, respectively, for each patient; patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New York, N. Y.

Honolulu, Hawaii.—The medical attendance to be furnished by a commissioned medical officer; the Queen's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient, and to furnish officers of the Public Health Service and Coast Guard with good private rooms, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rates of $2.50 and $5 a day for each officer; the Leahi Home to furnish patients suffering with tuberculosis with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; H. H. Williams to provide for the burial of deceased patients at the rate of $19 for each burial; the Mutual Telephone Co. (Ltd.) to furnish telephone service at the rate of $2 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at San Francisco, Cal.

Hoquiam, Wash.—The medical attendance to be furnished by an acting assistant surgeon; the Hoquiam General Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $2.50 and $1.75 a day, respectively, for each patient and to furnish ambulance service at the rate of $2.50 per patient. Patients requiring extended hos-

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pital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Port Townsend, Wash.

Irvington, Va.—The medical attendance to be furnished by an acting assistant surgeon; Frank G. Newbill to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $3 and $2 a day, respectively, for each patient, to provide for the burial of deceased patients at the rate of $15 for each burial, and to furnish ambulance service at the rate of $2 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

Jacksonville, Fla.—The medical attendance to be furnished by an acting assistant surgeon; St. Luke's Hospital Association to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to white patients suffering from noncontagious and contagious diseases, except smallpox, yellow fever, and tuberculosis, at the rate of $2 and $4 a day for each patient, respectively; the Brewster Hospital to furnish colored patients not suffering from contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; Marcus Conant to provide for the burial of deceased patients at the rate of $12 for each burial, and to furnish ambulance service at the rate of $5 per patient; James B. Parramore to furnish office quarters for the sum of $15 per month. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospital at Savannah, Ga.

Juneau, Alaska.—The medical attendance to be furnished by an acting assistant surgeon; St. Ann's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; Thos. J. McCaul to furnish ambulance service at the rate of $1.50 per patient; Goldstein Improvement Co. to furnish office quarters for the sum of $10 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Port Townsend, Wash.

Kansas City, Mo.—The medical attendance to be furnished by an acting assistant surgeon; J. W. Wagner to provide for the burial of

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deceased patients at the rate of $30 for each burial and to furnish ambulance service at the rate of $5 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at St. Louis, Mo.

Ketchikan, Alaska.—The medical attendance to be furnished by an acting assistant surgeon; the Arthur Yates Memorial Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; J. R. Hickman & Co. to provide for the burial of deceased patients at the rate of $50 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospital at Port Townsend, Wash.

Key West, Fla.—Hospital patients to be cared for in the United States marine hospital.

La Crosse, Wis.—The medical attendance to be furnished by an acting assistant surgeon; the La Crosse Hospital Association to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rate of $2 and $1 a day, respectively, for each patient; Tetley, Stetten & Dahl to provide for the burial of deceased patients at the rate of $17 for each burial; L. H. White to furnish ambulance service at the rate of $4 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at St. Louis, Mo.

Little Rock, Ark.—The medical attendance to be furnished by an acting assistant surgeon; St. Vincent's Infirmary to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1 a day for each patient; P. H. Rubel Co. to provide for the burial of deceased patients at the rate of $15 for each burial; James Cook & Son to furnish ambulance service at the rate of $2.25 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New Orleans, La.

Los Angeles, Cal.—The medical attendance to be furnished by a commissioned medical officer; the Emergency Hospital Association to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually

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expensive medicines, also surgical dressings, anæsthetizing, X-ray photographs, and ambulance service at the rate of $2 a day for each patient; the Button Undertaking Co. to provide for the burial of deceased patients at the rate of $26 for each burial; the Agency Wilcox Building to furnish office quarters for the sum of $30 per month; the Home Telephone & Telegraph Co. to furnish telephone service at the rate of $6.75 a month; the Union Towel & Case Co. to furnish towel service at the rate of $1 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at San Francisco, Cal.

Louisville, Ky.—Hospital patients to be cared for in the United States marine hospital.

Ludington, Mich.—The medical attendance to be furnished by an acting assistant surgeon; the Paulina Stearns Hospital to furnish quarters, subsistence, and nursing to patients suffering with both noncontagious and contagious diseases, except smallpox, erysipelas, diphtheria, and scarlet fever, at the rates of $1.75 and $2 a day, respectively, for each patient; Buckingham & Magmer to provide for the burial of deceased patients at the rate of $20 for each burial and to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Machias, Me.—The medical attendance to be furnished by an acting assistant surgeon; Sarah E. McCaslin to furnish patients not suffering with contagious diseases with quarters, subsistence, and nursing at the rate of $1.50 a day for each patient; L. H. Hanscom's Sons to provide for the burial of deceased patients at the rate of $18.50 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Portland, Me.

Manistee, Mich.—The medical attendance to be furnished by an acting assistant surgeon; the Mercy Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.75 a day for each patient; H. D. Bradford to provide for the burial of deceased patients at the rate of $16 for each burial; F. W. Cron & Co. to furnish ambulance service at the rate of $2.50 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Manitowoc, Wis.—The medical attendance to be furnished by an acting assistant surgeon; the Holy Family Hospital to furnish quar-

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ters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both noncontagious and contagious diseases, except smallpox, at the rates of $1.50 and $2 a day, respectively, for each patient; C. & W. Frazier to provide for the burial of deceased patients at the rate of $33.50 for each burial; Henry Meisner to furnish ambulance service at the rate of $4 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Marquette, Mich.—The medical attendance to be furnished by an acting assistant surgeon; St. Mary's Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with contagious and noncontagious diseases, at the rates of $2 and $1 a day, respectively, for each patient; Hager Bros. Co. to provide for the burial of deceased patients at the rate of $8.50 for each burial; the Marquette Ambulance Assn. to furnish ambulance service at the rate of $2.25 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Marshfield, Oreg.—The medical attendance to be furnished by an acting assistant surgeon; the Mercy Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $2 and $1.50 a day, respectively, for each patient; F. E. Wilson to provide for the burial of deceased patients at the rate of $17 for each burial; Ferguson Transfer Co. to furnish automobile ambulance service at the rate of $1.50 per hour per patient and to furnish horse-drawn ambulance service at the rate of $1 per hour per patient when necessary; Flanagan & Bennett Bank to furnish office quarters for the sum of $10 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at San Francisco, Cal.

Memphis, Tenn.—Hospital patients to be cared for in the United States marine hospital.

Menominee, Mich.—The medical attendance to be furnished by an acting assistant surgeon; St. Joseph's Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $3 and $1.50 a day, respectively,

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for each patient; the Square People Undertaking Co. to provide for the burial of deceased patients at the rate of $20 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Milwaukee, Wis.—The medical attendance to be furnished by a commissioned medical officer; St. Mary's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; Milwaukee health department to care for patients suffering from contagious diseases at the rate of $3.50 a day for each patient; Wendler & Son to provide for the burial of deceased patients at the rate of $18 for each burial; Curtis Bros. to furnish ambulance service at the rate of $3 per patient; the Wisconsin Telephone Co. to furnish telephone service at the rate of $50 per annum, for which 1,000 original calls will be allowed and charge in excess of this number to be as follows: the following 300 calls, 4 cents each; for the next 200 calls, 3 cents each; and all calls in excess of 1,500, 2 cents each; the Huebsch Laundry Co. to launder office towels at the rate of 1 cent each. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Mobile, Ala.—Hospital patients to be cared for in the United States marine hospital.

Nashville, Tenn.—The medical attendance to be furnished by an acting assistant surgeon; the Nashville City Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1 a day for each patient; the Davidson County Isolation Hospital to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; Dorris-Karsch & Co. to provide for the burial of deceased patients at the rate of $13 for each burial and to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Memphis, Tenn.

Natchez, Miss.—The medical attendance to be furnished by an acting assistant surgeon; the Natchez Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitox-

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ins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1 a day for each patient; the city of Natchez to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; the Natchez Hospital to furnish ambulance service at the rate of $5 per patient; L. H. Hutton to provide for the burial of deceased patients at the rate of $15 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New Orleans, La.

New Bedford, Mass.—The medical attendance to be furnished by an acting assistant surgeon. St. Luke's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient, to furnish X-ray pictures at the rate of $5 each, and to furnish use of operating room at the rate of $5 for each operation. Peleg H. Sherman to provide for the burial of deceased patients at the rate of $20 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Boston, Mass.

Newbern, N. C.—The medical attendance to be furnished by an acting assistant surgeon. St. Luke's Hospital to furnish patients suffering from contagious and noncontagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rates of $3 and $1.50 a day for each patient, respectively. J. K. Willis Co. to provide for the burial of deceased patients at the rate of $15 for each burial. J. A. Jones to furnish ambulance service at the rate of $3 per patient. Jones & Patterson to furnish office quarters for the sum of $12 per month. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospitals at Baltimore, Md., or Savannah, Ga.

New Haven, Conn.—The medical attendance to be furnished by an acting assistant surgeon. The New Haven Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with noncontagious diseases at the rate of $1.25 a day for each patient, to provide for the burial of deceased patients at the rate of $30 for each burial, and to furnish ambulance service at the rate of $2 per patient.

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Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New York, N. Y.

New London, Conn.—The medical attendance to be furnished by an acting assistant surgeon. The Memorial Hospital Association to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient, and to furnish ambulance service at the rate of $1.50 per patient. The department of health to furnish patients suffering with contagious diseases with quarters, subsistence, medical attendance, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $3 a day for each patient. Foran & Son Co. to provide for the burial of deceased patients at the rate of $19.50 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New York, N. Y.

New Orleans, La.—Hospital patients to be cared for in the United States marine hospital.

Newport, Ark.—The medical attendance to be furnished by an acting assistant surgeon. C. K. Baker to furnish patients not suffering with contagious diseases with quarters, subsistence, and nursing at the rate of $1.50 a day for each patient. R. F. Drummond to provide for the burial of deceased patients at the rate of $12 for each burial; A. M. Edgar to furnish ambulance service at the rate of $2 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Memphis, Tenn.

Newport, Oreg.—The medical attendance to be furnished by an acting assistant surgeon; the Hot Sea Sanitarium to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.75 a day for each patient; Hollingsworth & Hartley to provide for the burial of deceased patients at the rate of $45 for each burial; the Newport Transfer Co. to furnish ambulance service at the rate of $1 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospital at Port Townsend, Wash.

Newport, R. I.—The medical attendance to be furnished by an acting assistant surgeon; the Newport Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence,

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nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Boston, Mass.

Newport News, Va.—The medical attendance to be furnished by an acting assistant surgeon. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

New York, N. Y.—Hospital patients to be cared for in the United States marine hospital.

Nome, Alaska.—The medical attendance to be furnished by an acting assistant surgeon. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Port Townsend, Wash.

Norfolk, Va.—The medical attendance to be furnished by a commissioned medical officer; the Hospital of St. Vincent de Paul to furnish, in accordance with the terms of their proposal, quarters, subsistence, nursing, service of one interne, ambulance service, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with noncontagious and contagious diseases, at the rates of $1.50 and $3 a day, respectively, for each patient; Paul B. Warren to provide for the burial of deceased patients at the rate of $20 for each burial; the Chesapeake & Potomac Telephone Co. of Virginia to furnish telephone service at the rate of $6 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

Ogdensburg, N. Y.—The medical attendance to be furnished by an acting assistant surgeon; the Ogdensburg City Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; St. John's Hospital to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; L. McGillis Furniture Co. to provide for the burial of deceased patients at the rate of $15 for each burial, and to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Buffalo, N. Y.

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Oswego, N. Y.—The medical attendance to be furnished by an acting assistant surgeon. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Buffalo, N. Y.

Paducah, Ky.—The medical attendance to be furnished by an acting assistant surgeon; the city of Paducah to furnish patients suffering with both contagious and noncontagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rates of $3.50 and $1.75 a day, respectively, for each patient; Nance & Selby to provide for the burial of deceased patients at the rate of $15 for each burial and to furnish ambulance service at the rate of $2.50 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Cairo, Ill.

Pensacola, Fla.—The medical attendance to be furnished by an acting assistant surgeon; the Pensacola Hospital to furnish patients not suffering with smallpox with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; Northup & Wood to provide for the burial of deceased patients at the rate of $15 for each burial and to furnish ambulance service at the rate of $2.50 per patient; the Watson Agency (Inc.) to furnish office quarters for the sum of $30 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Mobile, Ala.

Perth Amboy, N. J.—The medical attendance to be furnished by an acting assistant surgeon; the Perth Amboy City Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $10 per week for each patient and use of operating room at $5 for each operation; E. J. Mullen to provide for the burial of deceased patients at the rate of $46 for each burial; Hall & Hilsdorf Auto Co. to furnish ambulance service at the rate of $1 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New York, N. Y.

Philadelphia, Pa.—The medical attendance to be furnished by a commissioned medical officer; St. Agnes Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, service of resident physician, use of operating room, use of telephone for local calls, surgical dressings, and necessary medicines,

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except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient, and $3 a day for patients requiring to be isolated in separate room with services of a special nurse, and to furnish ambulance service at the rate of $3 per patient; the department of public health and charities to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2.25 a day for each patient and to furnish ambulance service for patients suffering with contagious diseases at the rate of $5 per patient; James J. Dougherty to provide for the burial of deceased patients at the rate of $36 for each burial; the American Ice Co. to furnish ice at the rate of 40 cents per hundred pounds; the Quaker City Laundry to launder office towels at the rate of 1 cent each. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

Pittsburgh, Pa.—Hospital patients other than female patients and patients suffering with contagious diseases, to be cared for in the United States marine hospital; the Mercy Hospital to furnish female patients with quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1 a day for each patient and to furnish the use of operating room when required at the rate of $5 for each operation; the city health department to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2.40 a day for each patient.

Ponce, P. R.—The medical attendance to be furnished by an acting assistant surgeon; St. Lukes Memorial Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $2.50 and $1 a day, respectively, for each patient; Bartalomé Seguí to provide for the burial of deceased patients at the rate of $26 for each burial.

Port Angeles, Wash.—The medical attendance to be furnished by an acting assistant surgeon; the Olympic Hospital to furnish patients suffering with contagious and noncontagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarasn, neosalvarsan, and other unusually expensive medicines, at the rates of $2 and $1.33⅓ a day for each

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patient, respectively; Fulmer Undertaking Co. to provide for the burial of deceased patients at the rate of $35 for each burial; and to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospital at Port Townsend, Wash.

Port Arthur, Tex.—The medical attendance to be furnished by an acting assistant surgeon; the Mary Gates Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, and nursing at the rate of $1.50 a day for each patient; Adams & Cantwell to provide for the burial of deceased patients at the rate of $15.50 for each busial and to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New Orleans, La.

Port Huron, Mich.—The medical attendance to be furnished by an acting assistant surgeon; the Port Huron Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; Albert A. Falk to provide for the burial of deceased patients at the rate of $7 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Detroit, Mich.

Portland, Me.—Hospital patients to be cared for in the United States marine hospital.

Portland, Oreg.—The medical attendance to be furnished by a commissioned medical officer; St. Vincent's Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $2 and $1 a day, respectively, for each patient; the Sanitarium Co. to care for insane patients of the service at the rate of $27.50 a month; Edward Holman Undertaking Co. to provide for the burial of deceased patients at the rate of $10 for each burial; F. O. Downing to furnish office quarters for the sum of $62.50 per month; the Red Cross Ambulance Co. to furnish ambulance service at the rate of $3.50 per patient; the Portland Laundry Co. to furnish laundry service at the rate of $1 a month; the Pacific Telephone & Telegraph Co. to furnish telephone service at the rate of $5 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Port Townsend, Wash., except cases considered proper for treatment at Fort Stanton,

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N. Mex., who will be transferred to the United States marine hospital at San Francisco, Cal.

Portsmouth, N. H.—The medical attendance to be furnished through the office of the deputy collector of customs; the Portsmouth Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.25 a day for each patient; A. T. Parker to provide for the burial of deceased patients at the rate of $15 for each burial; Albert Hislop to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Portland, Me.

Port Tampa, Fla.—The medical attendance to be furnished by an acting assistant surgeon; the Centro Austriano Sanitarium, at Tampa, Fla., to furnish white patients not suffering with contagious diseases with quarters, subsistence, and nursing, at the rate of $2 a day for each patient; the Clara Frye Hospital, at Tampa, Fla., to furnish colored patients with quarters, subsistence, and nursing, at the rate of $1.50 a day for each patient; J. L. Reed to provide for the burial of deceased patients at the rate of $9.75 for each burial; Henderson Blount Co. to furnish ambulance service at the rate of $5 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospital at Key West, Fla.

Port Townsend, Wash.—Hospital patients to be cared for in the United States marine hospital.

Providence, R. I.—The medical attendance to be furnished by a commissioned medical officer; the Providence Surgical Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.75 a day for each patient; the board of hospital commissioners to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of 2.14\frac{2}{7}$ a day for each patient; the Rhode Island Hospital to furnish ambulance service at the rate of $2 per patient; D. F. McCarthy & Son to provide for the burial of deceased patients at the rate of $16 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Boston, Mass.

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Provincetown, Mass.—The medical attendance to be furnished by an acting assistant surgeon. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Boston, Mass.

Richmond, Va.—The medical attendance to be furnished by an acting assistant surgeon; the Retreat for the Sick to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; Thomas A. Reddin to provide for the burial of deceased patients at the rate of $25 for each burial; J. W. Bliley Co. to furnish ambulance service at the rate of $2.75 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

Rockland, Me.—The medical attendance to be furnished by an acting assistant surgeon; the Knox County General Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, and nursing at the rate of $1.75 a day for each patient; N. A. & S. H. Burpee Furniture Co. to provide for the burial of deceased patients at the rate of $17 for each burial; Berry Bros. & Co. to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Portland, Me.

St. Louis, Mo.—Hospital patients to be cared for in the United States marine hospital.

St. Paul, Minn.—The medical attendance to be furnished through the office of the deputy collector of customs; St. Joseph's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; Dampier-Fisher Co. to provide for the burial of deceased patients at the rate of $25 for each burial; St. Paul Motor Ambulance Co. to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at St. Louis, Mo.

Saginaw, Mich.—The medical attendance to be furnished by an acting assistant surgeon; St. Mary's Hospital to furnish quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and

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noncontagious diseases, at the rates of $2 and $1.25 a day, respectively, for each patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Detroit, Mich.

San Diego, Cal.—The medical attendance to be furnished by a commissioned medical officer; Agnew Sanitarium to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient and to furnish the use of operating room at the following rates: For major operations, $7.50, and for minor operations, $5; the city board of health to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $3 a day for each patient, and to furnish ambulance service for contagious cases at the rate of $5 for each patient; Bradley & Woolman to provide for the burial of deceased patients at the rate of $50 for each burial; the Dupree's Auto Livery (Inc.) to furnish ambulance service at the rate of $5 per patient; Otto G. Marsh to furnish office quarters for the sum of $36 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at San Francisco, Cal.

Sandusky, Ohio.—The medical attendance to be furnished by an acting assistant surgeon; the Providence Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1 a day for each patient; John J. Marquart to provide for the burial of deceased patients at the rate of $25 for each burial and to furnish ambulance service at the rate of $2 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Cleveland, Ohio.

San Francisco, Cal.—Hospital patients to be cared for in the United States marine hospital.

San Juan, P. R.—The medical attendance to be furnished by a commissioned medical officer; the United States military hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines at the rate of 65 cents a day for each patient; the Anti-Tuberculosis League of Porto Rico to care for patients suffering with tuberculosis at the rate of $2 a day for each patient; the director of sanitation of Porto Rico to care for patients suffering with ordinary contagious diseases, so far as prac-

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ticable, at the rate of $1 a day for each patient; patients suffering with quarantinable diseases to be cared for at the quarantine station, and the appropriation for quarantine maintenance, 1917, to be reimbursed at the rate of $2.50 a day for each patient; José G. Acevedo to provide for the burial of deceased patients at the rate of $30 for each burial.

San Pedro, Cal.—The medical attendance to be furnished by a commissioned medical officer; the San Pedro Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, also surgical dressings and anesthetizing at the rate of $2 a day for each patient and to furnish ambulance service at the rate of $1.50 per patient and to furnish X-ray service at the rate of $2.50 per plate; R. S. Goodrich Undertaking Co. to provide for the burial of deceased patients at the rate of $30 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at San Francisco, Cal.

Sault Ste. Marie, Mich.—The medical attendance to be furnished by an acting assistant surgeon; the Sault Ste. Marie Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient and to furnish ambulance service at the rate of $2 per patient; Conway & Hall to furnish office quarters for the sum of $10 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Savannah, Ga.—Hospital patients to be cared for in the United States marine hospital.

Seattle, Wash.—The medical attendance to be furnished by a commissioned medical officer; the Providence Hospital (Sisters of Charity) to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate af $1.25 a day for each patient; the city of Seattle to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines at the city isolation hospital at the rate of $25 per week or $4 a day when less than one week for each patient; the Home Undertaking Co. to provide for the burial of deceased patients at the rate of $8.90 for each burial and to furnish ambulance service at the rate of $3 per patient; the Packard-Velie Taxicab Service to furnish taxicab serv-

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vice at the rate of 40 cents for the first mile or fraction thereof and 30 cents for each succeeding mile; the Broadway Laundry Co. to furnish laundry service as follows: Towels, 1 cent; sheets, 3 cents; pillowcases, 2 cents; and surgical gowns, 35 cents. The Pacific Telephone & Telegraph Co. to furnish telephone service at the rate of $7.50 a month; the Business Property Security Co. to furnish office quarters for the sum of $55 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Port Townsend, Wash., except patients considered proper for treatment at Fort Stanton, N. Mex., who will be transferred to the United States marine hospital at San Francisco, Cal.

Sheboygan, Wis.—The medical attendance to be furnished by an acting assistant surgeon; St. Nicholas Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.50 a day for each patient; M. Kroos & Son to provide for the burial of deceased patients at the rate of $18 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Solomons, Md.—The medical attendance to be furnished by an acting assistant surgeon; C. E. Davis to furnish patients not suffering with contagious disease with fuel, light, water, subsistence, and nursing at the rate of $1 a day for each patient; Elliot E. Dixon to provide for the burial of deceased patients at the rate of $8 for each burial; M. M. Davis to furnish office quarters for the sum of $12 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

Superior, Wis.—The medical attendance to be furnished by an acting assistant surgeon; St. Mary's Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.25 a day for each patient; the city health commissioner to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $2 a day for each patient; the Bowser Transfer Co. to furnish ambulance service at the rate of $3 per patient; A. P. Le Sage to provide for the burial of deceased patients at the rate of $5.88 for each burial. H. Jefferson O'Brien to furnish office quarters for the sum of $10 per month

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Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Chicago, Ill.

Tacoma, Wash.—The medical attendance to be furnished by an acting assistant surgeon; the Tacoma General Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.25 a day for each patient and to furnish X-ray examinations at $2.50 each; the city of Tacoma to furnish patients suffering with contagious diseases with quarters, subsistence, nursing, medical attendance, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $3 a day for each patient; the Tacoma Taxicab & Baggage Transfer Co. to furnish ambulance service at the rate of $3 per patient; Buckley-King Co. to provide for the burial of deceased patients at the rate of $20 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Port Townsend, Wash.

Toledo, Ohio.—The medical attendance to be furnished by an acting assistant surgeon; St. Vincent's Hospital to furnish quarters subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, to patients suffering with both contagious and noncontagious diseases at the rates of $2 and $1.50 a day, respectively, for each patient; Joseph L. Acker to provide for the burial of deceased patients at the rate of $35 for each burial; James R. Clegg to furnish ambulance service at the rate of $3 per patient. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Detroit, Mich.

Unalaska, Alaska.—The medical attendance to be furnished through the office of the deputy collector of customs. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Port Townsend, Wash.

Valdez, Alaska.—The medical attendance to be furnished by an acting assistant surgeon. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Port Townsend, Wash.

Vicksburg, Miss.—The medical attendance to be furnished by an acting assistant surgeon; the Vicksburg Infirmary to furnish quarters,

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subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines to patients suffering with both noncontagious and contagious diseases, except smallpox, at the rates of $1.50 and $3.50 a day, respectively, for each patient; Frank J. Fisher to provide for the burial of deceased patients at the rate of $21.50 for each burial, and to furnish ambulance service at $4 per patient; the First National Bank, P. L. Hennessey & Bro., agents, to furnish office quarters for the sum of $15 per month. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at New Orleans, La.

Vineyard Haven, Mass.—Hospital patients to be cared for in the United States marine hospital.

Washington, D. C.—The medical attendance to be furnished by a commissioned medical officer; the Providence Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, and necessary medicines, except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1 a day for each patient, to furnish use of operating room at the rate of $10 for each operation, to furnish ambulance service at the rate of $3 per patient, to provide for the burial of deceased patients at the rate of $20 for each burial and to, furnish officers of the Public Health Service and Coast Guard with a private room, subsistence, nursing, service of interne, surgical dressings, and necessary medicines, except serums, vaccines, antitoxins salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $15 a week in addition to the regular charge of $1 a day made in the case of other patients of the service; the Tolman Laundry to launder office towels and sheets at the rates of 1 cent and 3 cents each, respectively. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospital at Baltimore, Md.

Washington, N. C.—The medical attendance to be furnished by an acting assistant surgeon; the Fowle Memorial Hospital to furnish quarters, subsistence, and nursing to patients suffering with both contagious and noncontagious diseases at the rates of $1.50 and $1.15 a day, respectively, for each patient; Southern Furniture Co. to provide for the burial of deceased patients at the rate of $20 for each burial. Patients requiring extended hospital treatment shall, if able to bear transportation without injury, be transferred to the United States marine hospitals at Baltimore, Md., or Savannah, Ga.

Wilmington, N. C.—The medical attendance to be furnished by a commissioned medical officer; the James Walker Memorial Hospital to furnish patients not suffering with contagious diseases with quarters, subsistence, nursing, service of interne, and necessary medicines,

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except serums, vaccines, antitoxins, salvarsan, neosalvarsan, and other unusually expensive medicines, at the rate of $1.30 a day for each patient; to furnish ambulance service at the rate of $2 per patient; and to furnish use of operating room at the following rates, viz: For laparotomy operations, $10 each, and for all other operations, $5 each. The New Hanover County Board of Health to treat contagious cases at the rate of $2.50 a day for each patient; W. W. King to provide for the burial of deceased patients at the rate of $26 for each burial; the Southern Bell Telephone and Telegraph Co. to furnish telephone service at the rate of $4 per month; the city department of water and sewerage to provide sewerage service for the sum of $60 per annum. Patients requiring extended hospital treatment shall, if able to bear transportation, be transferred to the United States marine hospital at Savannah, Ga.

At the following-named ports treatment will be furnished patients in accordance with the provisions contained in paragraphs 474 to 480, Regulations of the United States Public Health Service, and hospital care and medical treatment will be furnished patients of the service (upon the approval of the Surgeon General in each case) in accordance with the provisions contained in paragraphs 513 to 526, regulations of said service: Apalachicola, Fla.; Barnstable, Mass.; Bath, Me.; Beaufort, S. C.; Castine, Me.; Cedar Keys, Fla.; Chatham, Mass.; Dennis, Mass.; Port Aransas, Tex.; Ellsworth, Me.; Hyannis, Mass.; Reedville, Va.; Sag Harbor, N. Y.; Salem, Mass.; and Nome, Alaska.

Officers and enlisted men of the United States Army and Navy may be admitted for care and treatment as patients of the United States Public Health Service upon the written requests of the proper military or naval authorities, the charge to be made for such care and treatment to be as follows, viz: When treated in marine hospitals, officers, $1 a day, and enlisted men, 75 cents a day; when treated in contract hospitals the contract rates (and additional charge for private room, if furnished upon request) to be charged in case of both officers and enlisted men. Whenever said service is required to incur expense for ambulance service, or whenever expensive medicines (such as serums, vaccines, antitoxins, salvarsan, and neosalvarsan) are furnished patients of the Army or Navy admitted to hospital treatment, charge therefor will be made in addition to the hospital rates mentioned.

The rate of charge for the care and treatment in hospital of seamen from foreign vessels (admitted under act of Congress approved Mar. 3, 1875) will be $1.25 a day at marine hospitals and the contract rates at stations of the second and third class. If expense is incurred for ambulance service, or if expensive medicines (such as serums, vaccines, antitoxins, salvarsan, and neosalvarsan) are furnished such

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patients admitted to hospital treatment, charge therefor will be made in addition to the hospital charges mentioned above.

Foreign seamen may be furnished office treatment, charge for same to be made at the rate of $1 for each treatment, together with an additional charge for any medicines that may be purchased or for expensive medicines that may be furnished from stock, such as serums, vaccines, antitoxins, salvarsan, and neosalvarsan.

A charge of $1 a day will be made for subsistence furnished officers of the United States Coast Guard while under hospital treatment at any station of the service.

Copies of written requests upon which patients of the above classes are admitted to treatment should be forwarded to the Surgeon General at the end of each month, or, in the case of third-class relief stations, attached to the relief certificates issued in each case.

(T. D. 36470.)

Meat inspection—When redelivery bond taken.

TREASURY DEPARTMENT, *June 8, 1916.*

To officers of the customs and others concerned:

In order to insure the delivery of imported meat and meat food products for inspection at destination when forwarded from a port of entry to another port, the redelivery bond (customs Cat. No. 3385) shall be taken in all cases by the collector at such port of entry before the shipment is permitted to go forward.

(95500.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36471.)

Drawback on medicinal preparations.

T. D. 35410 of May 17, 1915, extended to cover medicinal preparations manufactured by Schieffelin & Co., of New York, N. Y., with the use of various imported materials.

TREASURY DEPARTMENT, *June 8, 1916.*

SIR: The department's regulations of May 17, 1915 (T. D. 35410), providing for the payment of drawback on medicinal preparations manufactured by Schieffelin & Co., of New York, N. Y., with the use of domestic tax-paid alcohol, are hereby extended to cover medicinal preparations manufactured by the said company with the use of imported ergot and buchu leaves, and with the use of granulated opium manufactured by Powers, Weightman & Rosengarten, of Philadelphia, Pa., with the use of imported crude opium.

The quantity of imported ergot, buchu leaves, or powdered opium which may be taken as the basis for the allowance of drawback

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shall not exceed the quantity appearing in the exported medicinal preparations, with a maximum of the quantity shown in the sworn statement of the manufacturers, dated May 25, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn statements covering other medicinal preparations manufactured with the use of the imported materials specified, showing changes in the quantities of imported materials used or covering the use of other imported materials in the manufacture of medicinal preparations, may be filed, and upon verification of such supplemental statements drawback may be allowed on the medicinal preparations covered thereby.

Respectfully, ANDREW J. PETERS,
(101560–1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36472.)

Drawback on toilet preparations.

Drawback on toilet preparations manufactured with the use of imported alcohol or domestic tax-paid alcohol and on talcum and face powders manufactured with the use of imported talcum, French chalk, and rice powder by the Northam Warren Corporation, of New York, N. Y.

TREASURY DEPARTMENT, *June 8, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on toilet preparations manufactured by the Northam Warren Corporation, of New York, N. Y., with the use of either imported alcohol or domestic tax-paid alcohol, and on talcum and face powders manufactured by the said corporation with the use of imported talcum, French chalk, and rice powder.

The allowance shall not exceed the quantity of domestic tax-paid alcohol or imported material appearing in the exported articles, as shown by the sworn statement of the manufacturers, dated April 21, 1916, which is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after November 20, 1915.

Supplemental sworn statements covering other toilet preparations manufactured with the use of domestic tax-paid alcohol or imported materials may be filed, and upon verification of such supplemental schedules, drawback may be allowed on the toilet preparations covered thereby.

Respectfully, ANDREW J. PETERS,
(104344.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36473.)

Drawback on flavoring extracts.

Drawback on flavoring extracts manufactured by Fries & Fries, of Cincinnati, Ohio, with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *June 7, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on flavoring extracts designated as artificial raspberry, prune, cider, blackberry, raspberry "O," wild cherry, sweet cherry, Roman punch "L," brandy, champagne, banana wine, F & F apricot, crabapple, orange, plum, and maple, manufactured by Fries & Fries, of Cincinnati, Ohio, with the use of wholly domestic tax-paid alcohol.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated May 17, 1916, transmitted herewith, which will show, in the case of each lot of extracts manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, proof, and identity of the alcohol used, the kind of extract produced, and the number of bottles of extract of each size obtained. A sworn abstract from the manufacturing record and a certificate of manufacture shall be filed covering each lot of extract produced.

In liquidation, the allowance shall not exceed the quantity of alcohol used in the manufacture of the exported extract as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on the above named extracts exported on and after January 29, 1916.

Respectfully, ANDREW J. PETERS,
(104569-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 36474.)

Tare of Sumatra tobacco—Article 1109, Customs Regulations of 1915, amended.

TREASURY DEPARTMENT, *June 12, 1916.*

To collectors of customs and others concerned:

The fifth paragraph of article 1109 of the Customs Regulations of 1915 is amended to read as follows:

"Tobacco, leaf, not stemmed, 13 pounds per bale; Sumatra, 4½ pounds on the inside matting; weight of outside coverings to be ascertained."

(43579.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36475.)

Quinine glycerophosphate.

Quinine glycerophosphate will continue to be assessed with duty at the rate of 25 per cent ad valorem as a salt or compound of glycerophosphoric acid under paragraph 18, tariff act of October 3, 1913.

TREASURY DEPARTMENT, *June 12, 1916.*

SIR: I have to call your attention to the decision of the Board of United States General Appraisers of April 26, 1916, G. A. 7895 (T. D. 36360), wherein certain quinine glycerophosphate, which had been assessed with duty at the rate of 25 per cent ad valorem as a salt or compound of glycerophosphoric acid under paragraph 18 of the tariff act of October 3, 1913, was held by the board to be free of duty as a salt of cinchona bark under paragraph 584 of the said act.

In view of the unsatisfactory nature of the record in the case no appeal will be taken on the decision in question.

The department, however, has been advised by the Assistant Attorney General that another case is pending in which it is expected further testimony will be introduced.

Pending a judicial determination of the question, therefore, you will continue to assess duty on merchandise of the character in question at the rate of 25 per cent ad valorem as a salt or compound of glycerophosphoric acid under paragraph 18 of the tariff act of October 3, 1913.

Respectfully, ANDREW J. PETERS,
(97670.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36476.)

Invoices of tobacco.

Invoices of tobacco must describe kind, quality, and country of origin, and state the actual cost or market value of each bale, and whether filler, wrapper, or mixed.

TREASURY DEPARTMENT, *June 12, 1916.*

To collectors of customs and others concerned:

Pursuant to the provisions of paragraph 182 and paragraph D of section 3 of the tariff act of October 3, 1913, invoices of imported tobacco must specify in detail the character of the tobacco, its origin and grade, and, if purchased, the time when, place where, and from whom purchased, and the price paid or to be paid for each bale or package, and if obtained otherwise than by purchase the actual wholesale market value.

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Packages or bales when containing filler leaf only shall be invoiced as filler; when containing both filler and wrapper, but not more than 15 per cent of wrapper, shall be invoiced as mixed; and when containing more than 15 per cent of wrapper shall be invoiced as wrapper. Collectors will not permit entry of tobacco unless the invoice conforms to the above requirements.

If any tobacco is found not to agree with the invoice specifications, the collector will withhold delivery of the particular package not agreeing and report the facts to the special agent in charge for investigation. If the investigation discloses fraudulent invoicing, the tobacco should be seized and the facts reported by the collector to the United States attorney for prosecution.

(43579.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36477.)

Examiners' value record—System of.

TREASURY DEPARTMENT, *June 10, 1916.*

To collectors and other officers of the customs:

The department has approved the recommendation of the appraisers' efficiency committee relative to the plan of examiner's value record to be adopted by all examiners and acting examiners of merchandise, and appraising officers are hereby instructed to secure through the collectors of customs the necessary forms for that purpose and in accordance with the plan as hereinafter set forth.

The forms to be used are loose-leaf sheets for ring binders, as follows:

Cust. Cat. No. 6305A—"Examiner's comparative value record," 14 by 17 inches, for general use.

Cust. Cat. 6305B—"Examiner's comparative value record," 14 by 8½ inches, for general use.

Cust. Cat. 6307A—Continuation sheet to Cust. Cat. No. 6305A, 14 by 17 inches.

Cust. Cat. 6307B—Continuation sheet to Cust. Cat. 6305-B, 14 by 8½ inches.

Cust. Cat. No. 6309A—"Examiner's value record, advances to make market value," 14 by 17 inches.

Cust. Cat. No. 6309B—"Examiner's value record, advances to make market value," 14 by 8½ inches.

Cust. Cat. No. 6311A—Continuation sheet to Cust. Cat. No. 6309A, 14 by 17 inches.

Cust. Cat. No. 6311B—Continuation sheet to Cust. Cat. No. 6309B, 14 by 8½ inches.

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Cust. Cat. No. 6313—"Examiner's value record, china tableware," 14 by 17 inches.

Cust. Cat. No. 6315—"Examiner's value record, china hotel ware," 14 by 17 inches.

Cust. Cat. No. 6317—"Examiner's value record, fancy glassware," 14 by 17 inches.

Cust. Cat. No. 6319—"Examiner's value record, table glassware," 14 by 17 inches.

The ring binders have been given the following form numbers:

Cust. Cat. No. 6301, to hold sheets 14 by 17 inches, binding on 17-inch side.

Cust. Cat. No. 6303, to hold sheets 14 by 8½ inches, binding on the 8½-inch side.

Customs officers will make requisitions for the quantity of loose sheets and binders needed.

The following stationery articles will be furnished on requisition for use in connection with "Examiner's value record":

Gummed index tabs, 1⅞ by ⅝ inch projection.

Gummed-cloth tabs for reinforcing the holes in the loose-leaf sheets.

Manila folders, 9½ by 11¾ inches, top flap 8⅞ inches.

Examiners handling large staple lines of merchandise should use the long sheets, and those handling a variety of smaller miscellaneous lines should use the short sheets.

The general form should be arranged and indexed in the binders as follows:

Merchandise the wholesale selling price of which within a given area of production or distribution is generally uniform by a certain established trade standard and commonly sold under a trade name, should be indexed under the commodity, setting forth its name in the space at the upper right-hand corner and placing an index tab for the commodity on the edge of the sheet, arranging the sheets in alphabetical order. The columns which are without heading should be used to tabulate the names of the manufacturers, the sizes, quantities, brands, etc., of the commodity and the unit prices in such a manner that the prices of the various manufacturers may be compared.

Merchandise the product of various manufacturers, where brand or trade requirements do not entirely fix the price, should be indexed under the name of the manufacturer, placing the manufacturer's name in the space at the upper right-hand corner and an index tab on the edge of the sheet with the manufacturer's name or letter, arranging the sheets alphabetically, confining, however, the various manufacturers to the series of sheets embracing the commodity. An entire binder may be used for one commodity (say musical

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instruments), with the manufacturers alphabetically arranged, or several commodities may be separated in the same binder.

The columns without headings, where merchandise is indexed in the upper right-hand corner of the sheet, under the name of the manufacturer, are to be used as follows:

The wide column at the left for a description of the various items and their quantities and the narrow columns for the unit values of the various importers of the line.

Indexing under the name of the manufacturer will embrace the majority of purchased lines of merchandise imported into the United States. It permits of its systematic comparison of unit values of all importing the same article with the market value and with merchandise consigned for sale or when the manufacturer does not by sales in the home market or for export establish a foreign market value for his own merchandise.

Great care should be taken in setting forth the manufacturer's mill, stock, or factory number in the first column to the right of the description of the article, and these numbers should be verified with the copy of order if possible, and further identified on examination by the factors that are pertinent of that quality.

The printed headings of the general form will apply to all lines of merchandise, so that items of discount, royalty, packing charge, commission, inland freight, etc., may be set forth, when existing, for the purpose of showing whether or not they are included in the unit prices.

SPECIAL FORMS.

The special forms are for china and glass ware.

The printed headings are the same as those upon the general form, but set forth in the left-hand column in a printed list of the various imported articles of china and earthen ware, table and hotel ware, and glass, table, and fancy ware.

The narrow columns are to be used to tabulate the unit values of the various decorations or numbers of the decorations of the various manufacturers or shippers of the same articles.

The sheets are to be indexed under the name of the manufacturer, confining the index to the particular subject, glass or china ware.

Examiners dealing with extended lines of glass or china may find it necessary to confine a sheet to a single decoration, or at most a few decorations, tabulating on parallel lines prices of the various importers.

The price columns on all the sheets are devised on the "checkerboard" plan, which permits of the use of any number of squares for the problem of any particular method of price recording. Second sheets are supplied for all.

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Unit prices when remaining the same should not be repeated under subsequent entries. These records are for unit prices and not for records of shipments by entry numbers, as entry numbers are no part of this record.

ADVANCE VALUE RECORD, CAT. NO. 6309—A AND B.

A record by entry number of examiners' or importers' advances should be kept on this sheet to be placed immediately after the price record for each manufacturer or commodity, thus having all of the necessary price records for an examiner in one place, where they are instantly available. Where the unit is advanced, it should be shown on the general form, with the date of shipment noted. The entry number of the shipment advanced should be set forth on the advance value sheet, together with a description of the article, if necessary, and the importer's name with the date of shipment, so that the record of advances by entry numbers may be connected with the particular items advanced on the general form.

These advance sheets may be placed immediately after the price record for each commodity or they may be kept in a separate binder, indexed in the same manner as the general form.

Second sheets are supplied for both the general and special forms in long and short size.

CUSTOMS CAT. NO. 6401—EXAMINER'S INVOICE PORTFOLIO.

These folios are for invoices "in work" or pending examination. The invoices are to be filed in the folio, either under entry number, importer's name, or marks and numbers.

In addition to the examiner's comparative value record, all information in the nature of letters, price lists, catalogues, etc., relating to the value of merchandise should be filed in folders in a vertical filing cabinet, the folders arranged and indexed in the same manner as the value record sheets are arranged in the binders.

(93120.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36478.)

Drawback on chocolate coatings.

Drawback on chocolate coatings manufactured by the Puritan Pure Food Co., of New York, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *June 12, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on chocolate coatings

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manufactured by the Puritan Pure Food Co., of New York, N. Y., at their factory located at Lititz, Pa., with the use of refined sugar produced in whole or in part from imported raw sugar.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported chocolate coatings, as shown by the sworn statement of the manufacturers, dated May 23, 1915, which is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on chocolate coatings exported on or after March 31, 1916.

Supplemental sworn schedules covering other brands of chocolate coatings or showing changes in the formula may be filed, and upon verification of such supplemental schedules drawback may be allowed on the chocolate coatings covered thereby.

Respectfully, ANDREW J. PETERS,
(104930.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36479.)

Drawback on cables, cable sleeves, and solder.

Drawback on lead-covered cables, cable sleeves or joints, and resin core solder manufactured by the Western Electric Co., of Chicago, Ill., with the use of imported lead.—T. D. 23290 of September 26, 1901, T. D. 29112 of June 25, 1908, and T. D. 29670 of April 5, 1909, revoked.

TREASURY DEPARTMENT, *June 12, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on lead-covered cable, cable sleeves or joints, and resin core solder manufactured by the Western Electric Co., of Chicago, Ill., with the use of imported lead.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated May 19, 1916, transmitted herewith, showing, in the case of each lot of lead-covered cable, cable sleeves, and resin core solder manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the kind of article manufactured, the quantity produced, and the quantity and identity of imported lead appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported lead appearing in the exported article, as shown by the abstract from the manufacturing record.

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T. D. 23290 of September 26, 1901, T. D. 29112 of June 25, 1908, and T. D. 29670 of April 5, 1909, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(93450.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36480.)

Drawback on locomotives, locomotive tenders, etc.

Drawback on locomotives, locomotive tenders, snowplows, and parts of the same, manufactured by the American Locomotive Co., of New York, N. Y., with the use of imported materials and parts and with the use of materials and parts containing imported materials.—T. D. 29234 of August 29, 1908, T. D. 29323 of November 2, 1908, T. D. 29367 of November 30, 1908, T. D. 31077 of December 2, 1910, and T. D. 32893 of October 29, 1912, revoked.

TREASURY DEPARTMENT, *June 12, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on locomotives, locomotive tenders, and snowplows, and on parts of the same manufactured by the American Locomotive Co., of New York, N. Y., with the use of imported materials and parts and with the use of materials and parts manufactured with the use of imported materials covered by drawback rates now existing or which may be promulgated in the future.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated October 8, 1915, transmitted herewith, which will show, in the case of each locomotive, locomotive tender, snowplow, or part of the same, manufactured for exportation with benefit of drawback, the kind of article produced, the date of production, the quantity, value, and identity of each kind of imported material or part, and the quantity and identity of each kind of material or part containing imported materials used in the manufacture thereof, the quantity and value of waste of each kind resulting, and, in the case of parts of locomotives, locomotive tenders, and snowplows, a brief description of the process of manufacture. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of imported materials and parts and materials and parts containing imported materials which may be taken as a basis for the allowance of drawback shall not exceed the quantities used in the manufacture of the exported article, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported material which the value of such waste will replace.

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T. D. 29234 of August 29, 1908, T. D. 29323 of November 2, 1908, T. D. 29367 of November 30, 1908, T. D. 31077 of December 2, 1910, and T. D. 32893 of October 29, 1912, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(55424.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36481.)

Drawback on cleaned currants.

Drawback on cleaned currants produced by the Van Wey Import & Export Co., of New York, N. Y., from currants imported in bulk.

TREASURY DEPARTMENT, *June 12, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cleaned currants produced by the Van Wey Import & Export Co., of New York, N. Y., from currants imported in bulk.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated May 25, 1916, transmitted herewith, showing, in the case of each lot of currants cleaned, the lot number and date of cleaning thereof, the quantity and identity of imported currants cleaned, the quantity of cleaned currants obtained, and the quantity of waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the net weight of the exported cleaned currants, with an addition to compensate for waste as shown by the sworn abstract from the manufacturing record.

Drawback may be allowed under these regulations on cleaned currants exported on or after March 14, 1916.

Respectfull , ANDREW J. PETERS,
(104793.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36482.)

Drawback on cork disks.

Drawback on sterilized and bleached cork disks produced by the Crown Cork & Seal Co., of Baltimore, Md., from cork disks imported in an unsterilized and unbleached condition.

TREASURY DEPARTMENT, *June 12, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on sterilized and bleached cork disks produced by the Crown Cork & Seal Co., of Baltimore, Md., from disks imported in an unsterilized and unbleached condition.

The allowance shall not exceed the net weight of the sterilized and bleached cork disks exported.

The sworn statement of the Crown Cork & Seal Co., dated May 29, 1916, is transmitted herewith.

Drawback may be allowed under these regulations on sterilized and bleached cork disks exported on or after May 19, 1916.

Respectfully, ANDREW J. PETERS,
(64832.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 36483.)

Drawback on fire hose.

Drawback on fire hose manufactured by the Charles Neidner's Sons Co. (Inc.), of Malden, Mass., with the use of imported flax and hemp single yarns.—T. D. 25029 of February 20, 1904, T. D. 25472 of July 13, 1904, and T. D. 28112 of April 25, 1907, are hereby revoked.

TREASURY DEPARTMENT, *June 12, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on linen and hemp fire hose manufactured by the Charles Neidner's Sons Co. (Inc.), of Malden, Mass., with the use of imported flax and hemp single yarns.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated June 2, 1916, transmitted herewith, showing, in the case of each lot of fire hose manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the character, size, length, and weight of the fire hose produced and the quantity of yarn of each kind, grade, lea number, and color appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported yarns appearing in the exported fire hose, as shown by the abstract from the manufacturing record.

T. D. 25029 of February 20, 1904, T. D. 25472 of July 13, 1904, and T. D. 28112 of April 25, 1907, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(12198.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36484—G. A. 7917.)

Pyroxylin and paper booklets, lithographically printed, pyroxylin chief value.

Booklets lithographically printed, composed of pyroxylin and paper, pyroxylin chief value, are dutiable under the provision for "books of all kinds, * * * and printed matter * * * not specially provided for" in paragraph 329, rather than as articles in chief value of pyroxylin under paragraph 25 of the tariff act of 1913. Lithographic work is a class of printing.

United States General Appraisers, New York, June 7, 1916.

In the matter of protest 783994 of Kronfeld, Saunders & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Walden & Webster for the importers.
Bert Hanson, Assistant Attorney General, for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* The merchandise consists of booklets lithographically printed, composed of pyroxylin and paper, pyroxylin chief value, which were assessed at 40 per cent ad valorem under paragraph 25, tariff act of 1913, as articles composed in chief value of pyroxylin, and are claimed dutiable at 15 per cent ad valorem under paragraph 329 of the same act as printed matter.

We are without any testimony or exhibits that would give an ocular demonstration of the merchandise. The appraiser's report was offered in evidence by the protestants and, there being no objection on the part of the Government, was received.

The appraiser's report thus admitted establishes (1) that the merchandise consists of booklets lithographically printed, composed of pyroxylin and paper, and (2) that pyroxylin is the component material of chief value.

The question of law arising is whether or not paragraph 25 is more clearly applicable to this merchandise than paragraph 329.

Paragraph 25, as to the merchandise in question, may be divided into the following classes:

(*a*) Collodion and all other liquid solutions of pyroxylin, or of other cellulose esters, or of cellulose.

(*b*) Compounds of pyroxylin or of other cellulose esters, whether known as celluloid or by any other name, if in blocks, sheets, rods, tubes, or other forms not polished, wholly or partly, and not made into finished or partly finished articles.

(*c*) Polished or partly polished, finished or partly finished articles, of which collodion or any compound of pyroxylin or other cellulose esters, by whatever name known, is the component material of chief value.

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The first division refers to liquid solutions of pyroxylin; the second to solidified compounds of pyroxylin; and the third, to pyroxylin if polished wholly or partly, or manufactured into finished or partly finished articles.

Is a booklet in chief value of pyroxylin within the third division of this paragraph, as a finished article? Granting this booklet to be such article as is commonly understood by the word "booklet," is it within the provisions of paragraph 25? Is a printed booklet, even though pyroxylin may be the item of chief value, one of the articles contemplated by Congress as within the purview of paragraph 25?

Paragraph 329 relates to "books *of all kinds*, bound or unbound, * * * and printed matter, * * * not specially provided for." Is not this provision so specific that the merchandise is more aptly classified thereunder, even though pyroxylin is the component material of chief value?

We have the further fact in this case: This is not only a booklet, but it is lithographically printed, and it has been held that lithographic work is a class of printing.

In Arthur *v.* Moller (97 U. S., 365) the Supreme Court of the United States had before it the question whether certain chromolithographs, printed from oilstones upon paper, and known as decalcomania pictures, were in fact printed papers under section 2504 of the Revised Statutes, and therefore subject to a duty of 25 per cent ad valorem. In that case the question was whether it was printed matter or manufactures of paper. The court cited Arthur *v.* Rheims (96 U. S., 143), where it was held that the fact that artificial flowers were a manufacture of cotton did not determine that they were dutiable as components of cotton, but that they were properly taxable under the specific designation of "artificial flowers." Then the court said:

> No one would contend that a picture by an eminent artist painted on canvas would be subject to duties as a manufacture of flax, or that a line engraving of a high order of merit would come under the head of a manufacture of paper, or that a lithograph taken by a single impression does not fall under that branch of the statute which imposes duties on prints or printed matter.

In Ringk *v.* United States (164 Fed., 1021; T. D. 29037), the Circuit Court for the Southern District of New York had before it the question of the classification of postcards bearing on the face words printed in different languages, and on the back printed pictorial representations, ornamented with feathers, the feathers being the element of chief value. It was held that the printing, and not the feathers, constituted the chief features of the cards, and that, therefore, the cards were "printed matter" within the meaning of the tariff act of July 24, 1897, paragraph 403.

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The court said in that case:

The only choice in that case would be between printed matter and the catchall clause of paragraph 407 * * * for manufactures of paper not otherwise provided for. The printing upon the cards is not insignificant and subordinate in character. It is the chief thing, without which, even with the ornamentation, the merchandise would be of no practical value. The ornamentation, rather than the printed matter, appears to be the incidental feature of the article.

In United States *v.* Deutsch (178 Fed., 272; T. D. 30387), the Circuit Court of Appeals, Second Circuit, had before it practically the same question, and arrived at the same conclusion as did the court in the Ringk case (164 *Id.*, *supra*).

In the matter of protest 487919 of Bowling Green Storage & Van Co., G. A. 7285 (T. D. 31911) the board was passing on the question of books in chief value of leather, and they were held dutiable as manufactures of leather under paragraph 452 of the tariff act of 1909, rather than as books of all kinds wholly or in chief value of paper under paragraph 416 of the same act.

That case is not an authority in the case at bar by reason of the difference in the statute. Paragraph 416 of the tariff act of 1909 was dealing entirely with books of all kinds and printed matter, *wholly or in chief value of paper*. The present act restores the unlimited provision for books and printed matter as it was in the act of 1897. Paragraph 329 provides for books of all kinds and printed matter regardless of the component material of chief value. "Books of all kinds" may be bound in leather or pyroxylin much more valuable than the paper contained therein, but they could not be classified under the leather or pyroxylin paragraph of the present act. The chief item in the merchandise in question may be pyroxylin, yet it is a booklet lithographically printed, and therefore printed matter. So the Bowling Green case, *supra*, is not controlling on the question presented.

In the matter of protests 507002, etc., of W. Hazelberg *et al.*, G. A. 7301 (T. D. 32019), the board had before it booklets concededly decorated in whole or in part by hand or by spraying, in chief value of pyroxylin. They were classified by the collector as coming under the provisions of paragraph 17 of the tariff act of 1909. The protestants contended they were dutiable under paragraph 412 as "booklets, decorated in whole or in part by hand or by spraying, whether or not lithographed." The board said in that case:

The conclusion we reach is that the provision for "booklets, decorated in whole or in part by hand or by spraying, whether or not lithographed," is one which may fairly be regarded as independent of the limitation as to material attached to and qualifying the general provision for lithographic printing found present in the opening clause of paragraph 412.

The protests were sustained.

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In the case at bar we are satisfied that these lithographically printed booklets fall within the specific provision of paragraph 329, and that they are dutiable at 15 per cent ad valorem.

The protest is sustained, and the collector's decision reversed.

(T. D. 36485—G. A. 7918.)

Sweet almond oil—Castor oil.

MEDICINAL PACKAGES UNDER PARAGRAPH 17, ACT OF 1913.

1. Sweet almond oil and castor oil are sufficiently medicinal in their uses to be "similar articles" to medicinal compounds or combinations, within the meaning of paragraph 17, act of 1913, and should be so classified under such minimum provision, rather than under the provisions therefor in paragraph 45, when contained in packages of less than 2½ pounds gross weight.

2. The provision in paragraph 17 was designed to encourage the importation in bulk of medicinal compounds and commercial or scientific chemicals and "all similar articles" and to encourage their repacking in small packages in the United States, but in case (as imported) they were advanced in value by being thus packed, to increase the revenue thereon up to the minimum of 20 per cent.

MCCLELLAND, G. A., dissenting, holds that *sweet almond oil* and *castor oil*, being expressed oils, are natural products, and are therefore neither chemical nor medicinal compounds, combinations, nor similar articles within the meaning of paragraph 17 of the tariff act of 1913, and are not therefore subject to duty as therein provided. Being provided for *eo nomine* in paragraph 45, they are properly subject to duty thereunder.—G. A. 5718 (T. D. 25410) and Abstract 37926 cited.

United States General Appraisers, New York, June 7, 1916.

[In the matter of protests Nos. 770426, etc., of Monticelli Bros. *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia.]

[Affirmed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid* and *Charles D. Lawrence*, special attorneys), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers; MCCLELLAND, G. A., dissenting).

BROWN, *General Appraiser:* The merchandise consists of sweet almond oil and castor oil put up in packages of less than 2½ pounds gross weight. It was classified under paragraph 17, act of 1913, at 20 per cent, as being medicinal preparations or articles similar thereto. The castor oil is claimed to be dutiable at 12 cents per gallon and the almond oil at 5 cents per pound under the provisions therefor in paragraph 45, and the bottles at 30 per cent under paragraph 83.

Paragraph 17 reads in part:

Chemical and medicinal compounds, combinations, and *all similar articles* dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of 2½ pounds or less gross weight (except samples without commercial value) shall be dutiable at a rate not less than 20 per centum ad valorem. * * *

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The protests were submitted by the protestants on the official record and representative samples introduced at the hearing.

The sample of sweet almond oil is a small bottle about 5 inches long by 1½ inches wide and eight-tenths of an inch thick, bearing the label in Italian:

Prem. Lab. Farmaceutico—Ott. Candela, Milano.
Concessionari: Monticelli Bros., Philadelphia, Pa.
Olio Mandorle Dolci
(Netto gr. 30)
Purissimo.

This would seem to indicate that it was prepared in a prize pharmaceutical laboratory—that is, a laboratory that had been awarded prizes for the excellence of its pharmaceutical products.

The bottle is inclosed in an oiled paper, and is made up in a neat little retail package.

The castor-oil sample shows another small bottle, in distinctly retail shape, 4 inches by 1½ inches by three-fourths of an inch, with the words "castor oil" in English around the neck and pasted by label on the side, contained in a neat paper covering on which the following printed label appears:

Special Pharmaceutical Products. Carlo Erba, Milano. Castor Oil. Being by a special process obtained exclusively from the choicest Italian seed, it results altogether inodorous and tasteless and may therefore be administered without difficulty even to children and persons the most sensitive and refractory.

There can be no doubt that both these products are put up in this form especially for medicinal use.

It may be noted at the outset that the provisions for oils in paragraph 45, under which claim is made, are designed to cover various oils imported in much larger bulk than these little retail medicinal packages. All the provisions read so much per pound, per gallon, or the like, as "almond oil, sweet, 5 cents per pound"; "castor oil, 12 cents per gallon." As castor oil in bottles of this size would contain a very small quantity (a fraction of a gallon) and the almond oil a similarly small fraction of a pound, it would seem as if paragraph 45 were not intended to specifically cover such packages so put up, even if Congress had not prevented us from looking to see which paragraph was the more specific by including in paragraph 17 the language "whether specially provided for or not."

At the hearing on protest 790504 counsel for the importers requested that the record in protest 770426 be incorporated. Counsel for the Government objected until he had opportunity to examine the record, and decision was reserved on the motion. No further objection appearing on the record, the motion to incorporate is granted.

As the examiner testified that the statements made in the appraiser's report in protest 790504 were merely taken from Merck's

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Index and other authorities, the statements in said report therefore, being shown to be entirely hearsay, are not considered in arriving at our conclusion herein, and the importer's objection thereto is sustained for that reason.

The testimony tends to show that sweet almond oil is used for medicinal purposes.

It is matter of common knowledge that castor oil is also used medicinally.

That almond oil is medicinal is borne out by the following dictionary definitions:

Century Dictionary:

Almond oil.—A bland, fixed oil obtained from almonds by pressure and used in medicine as a demulcent.

National Standard Dispensatory:

Sweet almond when made into an emulsion with water forms an excellent vehicle for administration of other drugs. The fixed oil is a demulcent, and has been employed in irritated states of the upper air passages, stomach, and intestines.

Chemical Technology and Analysis of Oils, Fats, and Waxes, by Dr. J. Lewkowitsch:

Almond oil is largely used in pharmaceutical practice, hence the pharmacopœia of each country prescribes certain reactions for identification.

Almond oil is too expensive to admit of any other use than in the pharmaceutical practice and for high-class toilet soap. (Vol. II, p. 287.)

United States Dispensatory:

Oleum Amygdalæ Expressum.—Expressed oil of sweet almond. Oil of almond may be used for the same purposes as olive oil, and when suspended in water by means of mucilage or the yolk of egg and loaf sugar, forms a pleasant emulsion, useful in pulmonary affections attended with cough.

The castor oil and sweet almond oil here involved are therefore clearly medicinal preparations and as such are certainly "similar articles" to the medicinal compounds and combinations mentioned in said paragraph.

Castor oil and sweet almond oil, being medicinal and packed in packages of less than 2½ pounds gross weight, clearly fall within the language of paragraph 17, reading "medicinal compounds, combinations and all similar articles." Such medicinal preparations, even if not technically compounded, are similar articles to "medicinal compounds and combinations." As we said in discussing the scope and purpose of paragraph 17 in our recent decision on protest 737501, G. A. 7896 (T. D. 36361)—

The main purpose of this clause in paragraph 17 was to encourage the importation in bulk of medicinal compounds and commercial or scientific chemicals and similar articles and to encourage their repacking in smaller packages in the United States.

And as we might have added, to increase the revenue thereon up to the minimum of 20 per cent in case as imported they were advanced in value by such packing.

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Assuming that this was the purpose of Congress, which is manifest from the language used, why should a particular medicine, "castor oil," be exempted from the rule because it was not technically compounded, but a natural substance? It was plainly to avoid such distinction that Congress broadened the phrase by adding the words "all similar articles." To hold that a medicine which is technically uncompounded is not a "similar article" to a medicine which is technically a medicinal compound or preparation would be drawing it very fine and is foreign to the manifest scope and purpose of the paragraph. The similarity referred to must in reason refer to the medicinal qualities rather than to the physical make-up of the article. Otherwise the phrase "all similar articles" can have no meaning, for an article which is both a medicine and a compound is identical with, rather than similar to, a medicinal compound or combination.

It has been suggested that paragraph 45 is more specific than paragraph 17. The rule of statutory construction that the more specific provision controls would, of course, apply if we were considering the general provision in paragraph 5 for chemical and medicinal compounds and preparations as against a specific provision for castor oil or sweet almond oil, and if the latter were in terms more specific it would govern. But such rule can have no possible application as applied to the construction of a minimum provision like paragraph 17, which accentuates the package and provides that medicinal compounds, combinations, and all similar articles put up in a particular way shall pay the minimum rate of 20 per cent "*whether specially provided for or not.*" It goes without saying that these words "whether specially provided for or not" expressly exclude the conclusion that the rule as to which provision is more specific can be invoked in determining what articles in small packages are subject to this minimum rate.

Although glycerin, refined, was specially provided for as such in paragraph 35, we unanimously held in G. A. 7833 (T. D. 36031) that on account of the size of the package it was nevertheless properly classified under paragraph 17 because a chemical compound and similar to a medicinal compound.

We therefore hold that the classification under paragraph 17 is correct, and the protests are overruled.

DISSENTING OPINION.

McCLELLAND, *General Appraiser:* I can not concur in either the reasoning or the conclusions of my associates in this case, for the reason that I do not believe that either sweet almond oil or castor oil is a chemical or medicinal compound, or combination of such compounds, or an article similar thereto within the meaning of paragraph 17 of the

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existing tariff act, under which duty was assessed. Each of these oils is provided for *eo nomine* in paragraph 45 of said act, and of course there could be no question that these specific provisions would control in the classification thereof were it not for the so-called minimum provision in paragraph 17. These oils being imported in packages of less than 2½ pounds gross weight my associates hold that they must pay duty at 20 per cent ad valorem as "similar articles" to chemical and medicinal compounds or combinations of such articles. That castor oil and sweet almond oil have each medicinal qualities is not to be denied, but that either of them is a medicinal or chemical compound or is similar to either of these I do not believe.

Castor oil is expressed from the castor-oil bean and almond oil is expressed from the almond, and each is therefore a natural product, uncompounded, even though it may be said that either or both have naturally several chemical constituents.

In G. A. 5718 (T. D. 25410) it was held, among other things, that a mixture of castor and olive oils and oleic acid was not a chemical compound within the meaning of paragraph 3 of the tariff act of 1897 for the reason that the ingredients did not chemically combine, and this view was later affirmed in the United States Circuit Court upon consent of the parties (T. D. 27773). If such a mixture is not a chemical compound, it would seem difficult to comprehend why one of the constituents thereof should be so classed.

In the Century Dictionary I find the following definitions:

Chemical.—II. n. A substance produced by a chemical process; a chemical agent prepared for scientific or economic use; as, the manufacture of chemicals.

Compound.—I. a. 1. Composed of two or more elements, parts, or ingredients; not simple.

3. In *chem.*, a compound body.

Substances * * * produced by the union of two or more elements are termed compound bodies. These *compounds* have, in general, no more resemblance in properties to the elements which have united to form them than a word has to the letters of which it is made up.

Combination. 4. In *chem.*, chemical union; the production of a chemical compound.

Surely, it requires no argument to show that the natural products here involved are neither *compounds* nor *combinations* under these definitions.

In Abstract 37926 the issue presented was whether certain writing and copying ink, put up in bottles of less than 2½ pounds gross weight, should be assessed for duty under the provisions of paragraph 17, *supra*. The existing tariff act contains a special provision for ink in paragraph 37, and in deciding the issue in favor of protestant the board said:

Assuming, then, that the article in question is an ink composed of chemicals, the question turns on whether Congress was dealing with substances like ink when it provided that "chemical and medicinal compounds, combinations, and all similar

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articles" shall pay not less than 20 per cent if in 2½-pound packages or less. This provision was evidently put in the act for the purpose of direct or incidental protection to manufacturers or packers of the class of substances intended to be covered, so as to put a premium upon the importation in the unpacked form.

It appears that the section was designed to cover, in the first place, medicinal preparations. The second clause relates almost entirely to such preparations put up in capsules, pills, tablets, lozenges, troches, ampoules, jubes, and forms of that character, and the word "chemical" was evidently added to cover something more; but it is impossible to give a meaning to "all similar articles" as affecting the word "chemical." A thing is apparently either a chemical or it is not a chemical. There may be a number of things that are similar to medicinal compounds, and it is evident that the expression "except soap" is used by reason of the fact that many soaps are more or less medicinal; but it is hard to imagine an article similar to a chemical compound or combination, and without attempting in this case to say where Congress intended to draw the line, it would seem a misnomer to call an ink a chemical compound, even if entirely composed of chemicals in a technical sense, because you would then have one class of inks of a chemical make-up paying one rate of duty and another class, which is technically not chemical, paying another. This was evidently not intended. Primarily, the expression "chemical" was used here to cover substances of a chemical nature enumerated by name in this schedule; and if the words "other similar articles" were intended to give it a wider scope than that, still it would seem that it was not intended to cover a substance like the ink here in controversy.

If it might be said of writing ink, which the official chemist testified was a chemical mixture, that it did not fall within the provisions of paragraph 17, *supra*, what else may be said of these oils, which are shown by the record to be neither chemical nor medicinal compounds, combinations, or *similar articles*.

I am clearly of the opinion that the weight limitation in paragraph 17 was not designed by Congress to include natural products, and therefore it is my view that the collector's assessments were erroneous and that the protest claims should have been sustained.

(T. D. 36486—G. A. 7919.)

Machine blankets.

Endless woolen blankets used on calico-printing machines are not within the term "blankets" as used in paragraph 289, act of 1913, but were properly classified as manufactures of wool under paragraph 288.

United States General Appraisers, New York, June 9, 1916.

In the matter of protests 765909, etc., of F. T. Walsh against the assessment of duty by the collector of customs at the port of Boston.

[Affirmed.]

Blodgett, Jones, Burnham & Bingham (*Frederick W. Eaton* of counsel), for the importer.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin* and *Charles D. Laurence*, special attorneys), for the United States.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers).

BROWN, *General Appraiser:* The merchandise the subject of these protests is described by the appraiser in his report as "endless woolen

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blankets for use on calico-printing machines." The collector classified the goods as manufactures of wool at 35 per cent under paragraph 288, act of 1913, and the protestant claims they are properly dutiable as blankets under paragraph 289, at 25 per cent.

The following facts appear from the testimony: The articles are made of woolen material in the form of a belt—that is, woven in a long, endless piece—and are used on calico-printing machines to cover the lapping and also as a cushion. The lapping is a fabric, linen warp and wool filling, which is wound around the steel cylinder of the printing machine to form a cushion.

As to commercial designation, one witness for the importer testified the articles were known in the trade as endless woolen blankets; another that they were called woolen blankets, printers' blankets; a third, woolen blankets, endless printers' blankets.

On behalf of the Government one witness testified as to the difference between these so-called machine blankets and the ordinary bed blanket, in the weave, in the weight of the material, in the degree of the felting process, and in texture. Also in his trade experience dealing in blankets, he had never seen articles like those in question. He had dealt in such articles as pressed blankets, or woven pressed felts. Another witness testified that the term "blankets" in the trade meant various sorts of coverings of blanket material used for bodily warmth; that the article in question was not included in the class of blankets; that it has none of the characteristics of what the trade calls a blanket except it is made of wool. It is much heavier in weight. A third witness said they were known in the trade as "pressed blankets."

The testimony is too indefinite to establish a controlling commercial meaning of the term "blankets" different from the ordinary meaning. The use of the word "blanket" in connection with some qualifying word like "endless woolen," "machine," or "pressed," describing some particular article in relation to its mechanical use is insufficient to enlarge the scope of the term used in the statute.

We find, therefore, that the articles in question are not blankets within the common and ordinary meaning of that term. They are articles, which, although made from what might possibly be called blanket material, are especially designed and manufactured for use in calico printing, and we think it is clear that Congress in enacting the provision for "blankets" never intended to include articles described as machine blankets, printing blankets, mining blankets, etc., used in connection with some mechanical process, and which have no relation to blankets as ordinarily understood. We think the term in its ordinary significance must be held at least to be limited to bed blankets and other blankets used for bodily protection, that is, to keep out the cold.

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We accordingly hold that the merchandise is properly dutiable under paragraph 288, as classified by the collector, and overrule the protests.

(T. D. 36487—G. A. 7920.)

Cloth in chief value of mohair.

Certain cloth invoiced as "sateen" or "standard," made of wool warp and wool and mohair weft, the wool and mohair being spun together into yarn before being woven as the weft with the wool yarn warp into the finished cloth, and the mohair yarn being of greater value than the wool yarn, *held*, that such certain cloth was in chief value of mohair and therefore subject to duty at the rate of 40 per cent ad valorem under paragraph 308 of the tariff act of 1913.—G. A. 7860 (T. D. 36175); Seeberger *v.* Hardy (150 U. S., 420); and United States *v.* Meadows (2 Ct. Cust. Appls., 143; T. D. 31665) cited.

BROWN, *General Appraiser*, dissenting, holds, that cloth composed of a warp made of wool of the sheep and a weft made of wool of the sheep and mohair, with mohair preponderating in value in said weft, where the wool of the entire article exceeds in value the mohair therein, is properly classifiable under paragraph 288 or paragraph 290 of the wool schedule of the act of 1913 at 35 per cent ad valorem, and not under paragraph 308 of the mohair schedule at 40 per cent ad valorem.

United States General Appraisers, New York, June 9, 1916.

In the matter of protests 756970–53810, etc., of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago.

[Modified.]

H. W. Nay, for the importers.

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney) for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers; BROWN, G. A., dissenting).

MCCLELLAND, *General Appraiser:* The issues raised by these protests are whether certain "taffeta" and certain curtain material, invoiced as "sateen' or "standard," are subject to duty as assessed by the collector at the rate of 40 per cent ad valorem under the provisions of paragraph 308 of the tariff act of 1913 as being in chief value of the hair of the Angora goat, or whether duty should have been assessed at the rate of 35 per cent ad valorem under paragraph 288 as wool cloth, or at the same rate under paragraph 290 of said act as wool dress goods.

The issue as to the "taffeta" is eliminated by the admission of the Government analyst, upon whose report the collector based his assessment of duty, that the material (item No. 8520) is in chief value of the wool of the sheep. As to the item or items of that number the protests are sustained.

As to the curtain material, invoiced as "sateen" or "standard," however, the situation is different. The only witness called to testify was the official analyst in the appraiser's office at the port of Chicago

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who originally, and while the merchandise was under appraisement, analyzed a sample thereof with a view of determining the component material of chief value, and from the testimony of this witness it appears that this cloth was made of wool warp and wool and mohair weft; the mohair and wool being spun together into yarn or thread before being woven as the weft with the wool warp into the finished cloth.

The contention of protestants is that the wool and the mohair, constituting the yarn or thread of the weft, should have been separated and the wool therefrom united with the wool in the warp thread or yarn for the purpose of determining the component material of chief value; that is to say, for the purpose of determining whether wool or hair of the Angora goat was the component material in the finished cloth, all of the wool fibers found in the finished cloth should have been valued together as against the value of the mohair.

Even if the importers' theory of the law for the determination of the component material in chief value of an article for duty purposes were correct, such determination by the method contended for was, according to the testimony of the analyst, impossible. On page 4 of the record the witness testified as follows:

Q. In analyzing this fabric by separating the wool of the sheep from that of the wool of the Angora goat and determining the value of the two, which would be the component material of chief value?—A. It would be impossible, of course, to separate the wool of the mohair in the weft yarn because they are spun together in one thread.

Q. (By General Appraiser McClelland.) In the first analysis you reported that mohair was chief value?—A. Yes.

Q. As the result of your second analysis were you led to change your mind as to the component material of chief value or not?—A. In conjunction with Special Employee Chance. It would be impossible for me to determine because no separation could be made, that is why an investigation was asked for.

The opinion which the witness appears to have been led to express, viz, that the wool in the finished cloth as compared with the hair of the Angora goat was of greater value than such hair appears altogether to have been based upon the report of a special agent or foreign representative of the Government. The report of this agent is not a part of the record and the very least that may be said of the statements of the analyst based upon it as to the wool being of greater value than the hair is that it was hearsay, and therefore insufficient upon which to base a finding of fact in favor of protestants.

Even if protestants' theory as to the method of determining the component material of chief value were the correct one, under the statute the evidence is wholly insufficient to sustain their claim, but we are of the opinion that their theory is erroneous.

In G. A. 7860 (T. D. 36175) which involved the question of component material of chief value of waterproof raincoats, the board held that the components must be taken and valued in the condition in which they were severally ready to be combined and made into

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the completed article and the following views therein expressed apply with equal force here:

As an original proposition there might be room for a variance of view as to how the classification of an article composed of two or more materials should be determined under the provisions found in paragraphs 256 and 291, *supra*. It might be urged with some degree of reason that as to the merchandise in the case at bar, the materials of which it is composed being wool, cotton, silk, and rubber, should be separated and reduced to the respective conditions in which they were before being manufactured into articles, either by themselves or in combination with other articles or materials, and in such condition their values be ascertained for comparison; but it would seem that there is no longer room for such an argument in view of the construction placed upon similar provisions by the courts.

Two leading cases, Seeberger *v.* Hardy (150 U. S., 420) and United States *v.* Meadows (2 Ct. Cust. Appls., 143; T. D. 31665), seem to have laid down a rule for the determination of the component material of chief value in a completed article which must be accepted as controlling by this and other inferior judicial tribunals in the determination of such a question. In the former case the question was as to the classification of opera glasses composed of lenses in a metal frame with an outer covering of shell. There it was held that the condition of each component as it entered into the article must be taken as the basis for valuation. That is to say, it was held that the correct method for valuing the shell and the other components separately was to take each of them in condition ready to be manufactured into the opera glass, including the cost of labor necessary to bring each of them to the condition where they were ready to be united. In the latter case the question involved was the classification for duty of slippers made of leather and cotton cloth. The soles and the heel of the slipper were of leather and the uppers consisted of several thicknesses of cotton cloth cut to shape. In that case it was held that the expense of cutting the pieces of the finished cotton cloth, and of sewing them together and bringing them to the condition ready to be united to the leather of the slipper, were to be considered as elements in the value of the cotton cloth as a component material, as was the expense of shaping the soles and heels ready to be united with the cotton cloth to form the slipper to be considered as a part of the cost of the leather as the other component material of the slipper.

The threads or yarns which constituted the wool warp and wool and mohair weft in the completed cloth under consideration were, by processes of manufacture, including the spinning, prepared for use as separate and distinct materials in the weaving of this cloth, and in arriving at the value of such components, each of the yarns or threads being separate components, must be taken and valued in the condition in which they entered into the cloth, including the cost of labor necessary to bring each of them into the condition in which they were when united.

It appears not to be disputed that the yarn or thread composed of wool and mohair which constituted the weft was of greater value than the yarn or thread which constituted the wool warp, and therefore, inasmuch as it is apparent that mohair yarn is the component of chief value in the yarn or thread composing the weft, it follows that the component material of chief value in the completed cloth

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is mohair. The assessment of duty by the collector should therefore be sustained.

The protests are overruled except as to the "taffeta" (item number 8520).

DISSENTING OPINION.

BROWN, *General Appraiser:* I am unable to concur in the conclusion reached by the board in this case as to the curtain material.

This suit was brought to determine whether certain "taffeta" and certain curtain material invoiced as "sateen" or "standard" were properly dutiable according to the collector's classification as cloth made wholly or in chief value of the hair of the Angora goat under paragraph 308, act of 1913, at 40 per cent, or, as claimed by the importer, as wool cloth under paragraph 288 or wool dress goods under paragraph 290, at 35 per cent.

Considering first item 8520 (taffeta): As it was admitted by the Government analyst that the cloth designated by this particular item number is in chief value of wool of the sheep, it is therefore clearly dutiable at 35 per cent as claimed, and the protests are therefore properly sustained as to those items.

As to the certain materials, the testimony shows that this fabric consists of a warp which is composed entirely of wool of the sheep, and of a weft which is composed of wool of the sheep and hair of the Angora goat, and further, (1) that the value of the Angora hair in the weft exceeds the value of the wool of the sheep in the weft; (2) that the value of the wool of the sheep in the entire article exceeds the value of the mohair in the entire article, and (3) that the value of the weft exceeds the value of the warp.

The merchandise was analyzed with the aid of a microscope by Examiner Hynes, of Chicago. On his first analysis he did not notice the wool in the weft, but took it to be all mohair, with which he compared the warp and then found mohair chief value. It seems he made a second analysis because, from a report by Special Agent Chance, he obtained the information that the weft also contained wool. He then analyzed it again, and as the mohair and wool in the weft were spun together in one thread, he was unable to separate all the fibers, but he did determine by the use of the microscope that at least 25 per cent of the weft was wool. See testimony (p. 6):

Q. (By General Appraiser McCLELLAND.) In view of your discovery upon the second analysis that there was some wool in the weft, were you able to say which was the material of chief value?—A. In the fabric as an entirety?

Q. As an entirety.—A. My judgment would be that wool would be the chief value, taking, of course, the combination wool of the warp and the weft on the one hand as against the mohair in the weft on the other; that would be my judgment.

Q. Suppose you had had the information on the first analysis that you had on the second, what would your return have been?

Mr. MULVANEY. Same objection to that question. (Overruled.) (Exception.)

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A. Had I the information of the first case that I had in the second case I would have reported it as wool chief value.

Q. (By Mr. MULVANEY.) And to do that you would have separated the wool from the mohair in the weft thread?—A. I would have had to arrive at the conclusion. I would reason thus: The warp thread which is composed entirely of wool is nearly the same weight and nearly the same value as the weft threads, hence the presence of a fairly good percentage of wool in the weft, plus that which is already in the warp, would unquestionably throw it on the side of wool.

Q. What do you mean by fairly good percentage?—A. Twenty-five or better.

Q. Was that percentage present in this?—A. So far as one could judge by microscopic examination.

The above clearly shows that Examiner Hynes in making his second analysis was not relying on statements made by somebody else, but upon his own conclusion arrived at by the use of his microscope.

The testimony continues (p. 7):

Q. You were satisfied there was a fairly good percentage of wool in that weft thread?—A. Yes.

Q. If you took the mohair and wool in the weft thread and compared them which would have been the chief value?—A. Mohair in the weft thread.

Q. If you took the mohair and the wool in the weft thread and compared them with the value of the wool and warp thread?—A. The weft thread predominates in value.

The board holds that this line of merchandise was properly classified under paragraph 308, upon the theory that the mohair being the material of chief value in the weft, and the value of the weft exceeding the value of the warp, therefore the fabric is in chief value of the hair of the Angora goat; while the importer claims that the total sheep's wool component should be taken as against the total mohair component in the entire article.

The provision of the statute governing the classification of merchandise according to the component material of chief value is that portion of paragraph 386, reading as follows:

386. * * * And on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value; and the words "component material of chief value," wherever used in this section, shall e held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article.

This case is ruled by the case of George W. McCutcheon, reported in G. A. 6296 (T. D. 27155; 11 Treas. Dec., 319), wherein it was held that in the determination of the component material of chief value of a fabric each single material going to make up the yarns, as well as the fabric itself, must be taken into consideration. Where a fabric is composed in part of a yarn made of flax and jute, in the ascertainment of the single component material of chief value in said fabric both the flax and jute must be considered as compared with the other single c mponent materials entering into the composition of the fabric. Judge De Vries, speaking for Board 2, said (p. 320):

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The so-called flax yarn that was introduced in the manufacture of the goods is not a *single* component material as required by the statute, but is itself a manufacture of *two* single component materials, to wit, flax and jute. Section 7 of the tariff act of 1897 provides that in the ascertainment of the component material of chief value in a fabric it shall be according to "that component material which will exceed in value any *other single component* of the article." It seems to us clear and beyond controversy that the *single* component materials going to make up the flax yarn in the first instance are flax and jute, and the fabric in the second are cotton, flax, and jute.

In that case it was found as a fact "that the fabric is made up of a cotton weft and a warp made of yarns that are composed of flax and jute," and the board overruled the contention of the Government that the so-called flax yarn containing a percentage of jute should be held to be a single component material and thus make flax chief value in the entire article. The separation of the three materials (cotton, flax, and jute) resulted in cotton being chief value, as claimed by the importer.

This case is on all fours with the case at bar, and similarly here, in my opinion, we can not take the weft as if it were composed entirely of mohair and thus make mohair chief value, as claimed by the Government, but must resolve the whole article into its two single components (wool of the sheep and mohair) which clearly makes wool chief value.

See also a review of the authorities on the subject of component material of chief value in my dissenting opinion in the case of the True Fit Waterproof Co., G. A. 7860 (T. D. 36175).

(T. D. 36488—G. A. 7921.)

Samples.

Small skeins of silk yarn of various colors, arranged in book form, which represent shades in which silk fabrics may be manufactured, and the only use for which is by salesmen in taking orders for such silk fabrics, are entitled to free entry as samples under the provision in section 4, paragraph J, subsection 4, for "samples solely for use in taking orders for merchandise."

United States General Appraisers, New York, June 9, 1916.

In the matter of protest 794631 of Duplan Silk Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

A. R. Salembier for the importers.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The importation in this case consists of so-called samples. Witness for the importers said with reference to them:

Those are samples in order to take orders on our manufactured silks. They are not samples to take orders on yarns; they are samples to take orders on silk. They

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are of no commercial value except to indicate certain shades that we want manufactured in the silks that we are to order from abroad.

An examination reveals the so-called samples to be arranged in book form in the shape of silk threads wound or fastened upon cards. They are of different and varied colors, which are indicated by numbers or letters. It appears that the importers use these to illustrate the color of the fabric which they desire to sell. A piece of the fabric in the gray, or some neutral color, is exhibited, together with the so-called samples, and the purchaser is thereby enabled to select the fabric of the color desired.

The collector reports that the goods were assessed in accordance with the advisory report of the appraiser. The appraiser's report is as follows:

The merchandise consists of a number of small skeins of silk yarn of various shades and colors, arranged in book form. The purpose of this collection is not to solicit orders for the yarn, but to show new creations in colors and shades. It was therefore returned for duty according to the component material of chief value, which is silk, at 45 per cent ad valorem, paragraph 318, act of 1913, * * *.

The importers protest in the following language:

We claim that the said sample card is properly free of duty as being of no commercial value and used exclusively for taking orders, and that there is no other commercial use to which the same could be put, and we further claim it comes within the scope of T. D. 35539 governing free entry of samples.

The Government attorney objected to the introduction of testimony because of the insufficiency, as he claims, of the protest. The statute provides for the free entry of samples in section 4, paragraph J, subsection 4. We are of the opinion that there is sufficient in the protest to give notice of the paragraph under which claim is made, notwithstanding it is not named. The objection of the Government counsel is therefore overruled. The only question, then, to decide is whether these are samples within the meaning of the statute.

Similar samples were passed upon in the case of Badische *v.* United States (4 Ct. Cust. Appls., 374; T. D. 33535). The question there at issue is clearly stated in the syllabus, which reads as follows:

These samples that show coloring results are designed for the use of salesmen who place dyes on the market. They are not samples of the dyes themselves. The regulations provide that samples to be entitled to free entry must be such as "are obviously intended for use merely as samples of merchandise to sell the class of goods which they represent." These goods were properly assessed as printed matter under paragraph 416, tariff act of 1909.

The language quoted above "are obviously intended for use as samples of merchandise to sell the class of goods which they represent" is found in T. D. 31771, a regulation of the Secretary of the Treasury in force at the time of the decision of the Badische Co. case.

The case at bar arises under a statute (section 4, paragraph J, subsection 4) the language of which is, so far as pertinent:

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* * * Samples solely for use in taking orders for merchandise * * *: *Provided*, That no article shall be entitled to entry under this section that is intended for sale or which is imported for sale on approval.

The question of value is not pertinent here. The statute contemplates the importation of samples for certain purposes and under certain conditions, without reference to their value. So the only question to be determined is, Are these such samples as are intended to be covered by the statute? We think they are. They are samples of color, samples of some part of the completed merchandise. A sample of the fabric to be colored is exhibited at the same time. The purchaser is allowed to inspect the colors and choose therefrom the color he will have for his completed article. The goods in their completed state can not be clearly and intelligently presented to the purchaser without the use of some such device as the sample, so-called, in this case. We do not think under the circumstances of this case and the reading of the statute that it is necessary to have for sample a completed article such as is intended to be sold in the market. Take, for instance, the case of sale of an iron truss or beam weighing many tons. It can not be contemplated that a sample of the beams should be exhibited for the sale of same. Their dimensions, shape, and other characteristics might, perhaps, be as well conveyed by means of drawings or writings, but the quality of the steel would be very appropriately and necessarily represented by a sample of the steel to be used in the construction of the article. We think, under such circumstances, a bit of steel would be a sample. So we think the colors, or books of colors, should be considered samples, as they are intended for use in selecting shades in which it is desired the purchased silk fabrics shall be manufactured, and are used by salesman in taking orders for such silk fabrics. We therefore so hold, sustaining the protest.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, JUNE 5, 1916.

No. 39843.—Protest 761474 of John Darling & Co. (New York).

BOCKINGS—WOOL CLOTH—GREEN BAIZE.

BROWN, *General Appraiser:* The merchandise here, classified as wool cloth at 35 per cent under paragraph 288, act of 1913, is claimed to be dutiable under paragraph 301 as "bockings." Said paragraph reads:

301. Druggets and bockings, printed, colored, or otherwise, 20 per cent ad valorem.

The merchandise is imported in various widths—36, 45, 54, and 72 inches—and the average length of the pieces is about 30 yards.

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The importer testified that the term "druggets and bockings" includes—

Fabrics woven of coarse wool, heavy grades for covering carpets and for stages and lighter weight grades for covering tables, such as card tables and glove counters in stores, and it is also used for swinging doors.

He further stated that the chief use of the merchandise in question was for covering tables. On cross examination he admitted that the merchandise was commonly known in this country as green woven baize, or bocking.

The testimony is legally insufficient to establish a commercial definition of the term "bockings," and the dictionary definitions of the common meaning of the term are not sufficiently clear to include this article.

The evidence presented being insufficient to overcome the presumption in favor of the correctness of the classification, the protest must be overruled.

No. 39844.—Protest 770814–55826 of Bernard, Judae & Co. (Chicago), and protest 751657 of L. Bachman & Co., and protest 769138 of W. Bianchi & Co. (New York).

FLANNELS.—So-called shirting and tennis flannels, not used in the manufacture of underwear, classified as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, are claimed dutiable as flannels composed wholly or in chief value of wool under paragraph 289.

Opinions by BROWN, G. A. On the authority of G. A. 7772 (T. D. 35703) the flannels in question were held dutiable under paragraph 289, as claimed.

BEFORE BOARD 3, JUNE 5, 1916.

No. 39845.—Protests 787648–57408, etc., of Atwood & Steele Co. et al. (Chicago).

STUFFED OLIVES.—Olives stuffed with pimientos, classified as olives at 15 cents per gallon under paragraph 218, tariff act of 1913, are claimed dutiable as edible fruits prepared in any manner under paragraph 217, or free of duty as fruits in brine under paragraph 488.

Opinion by WAITE, G. A. The olives in question were held properly classified under paragraph 218. G. A. 7905 (T. D. 36387) followed.

No. 39846.—Protest 793969 of Atkinson, Haserick & Co. (Boston).

ENTERED VALUE.—It is claimed here that an item appearing as "royalty L 1800" on the invoice is not part of the per se value of the imported merchandise.

Opinion by WAITE, G. A. It appears that the item in question was included by the importers in the entered value, which was also the appraised value, and no appeal was taken to reappraisement. Protest overruled.

BEFORE BOARD 1, JUNE 7, 1916.

No. 39847.—Protest 795657 of Geo. Borgfeldt & Co. (New York).

METAL PENCIL HOLDERS AND PENCILS—ENTIRETIES.—Metal pencil holders classified at 20 per cent ad valorem under paragraph 167, tariff act of 1913, and short wooden pencils classified under the provisions of paragraph 378, are claimed dutiable as entireties under paragraph 167.

Opinion by MCCLELLAND, G. A. It was found that the metal barrel and the pencils were designed to be used together as an entirety. They were held dutiable under paragraph 167, as claimed.

No. 39848.—Protest 761660 of Thos. Meadows & Co. (New York).

SEWING CASES—NEEDLEBOOKS.—Sewing cases classified as traveling sets in chief value of leather at 30 per cent ad valorem under paragraph 360, tariff act of 1913, are claimed dutiable as needlecases at 20 per cent under paragraph 135.

Opinion by SULLIVAN, G. A. The merchandise in question consists of (1) small leather cases containing needles, pins, and thread, some also with a small pair of

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needles, and thread. They were found to be needlecases or needlebooks, furnished, and held dutiable under paragraph 135. G. A. 7671 (T. D. 35099), affirmed in United States *v.* Poirier (6 Ct. Cust. Appls., 239; T. D. 35470) followed.

No. 39849.—Protest 523532 of Emrich, King & Schorsch (New York).

JEWELRY—SUFFICIENCY OF PROTEST.—It is claimed in this protest that certain silver chains, unfinished, classified at 85 per cent or other rate or rates, are dutiable at 45 per cent under paragraph 199, at 60 per cent under paragraph 448, or at 10 or 20 per cent under paragraph 480, tariff act of 1909.

Opinion by Sullivan, G. A. At the hearing the protestants sought to enlarge the protest by testimony that the invoice covered thereby related to brooches, neck chains, hatpins, and necklaces. It was held that this can not be done. G. A. 7831 (T. D. 36003) cited. Protest overruled as insufficient.

BEFORE BOARD 2, JUNE 7, 1916.

No. 39850.—Protest 800616 of Wester Bros. (New York).

SURGICAL FORCEPS.—Merchandise classified as nippers or pliers at 30 per cent ad valorem under paragraph 166, tariff act of 1913, is claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the authority of Koch *v.* United States (6 Ct. Cust. Appls., 534; T. D. 36148) the surgical forceps in question were held dutiable under paragraph 167, as claimed.

No. 39851.—Protests 786782–57533, etc., of Bernard, Judae & Co. (Chicago).

DEFECTIVE PIPES.—Defective pipes classified at 20 per cent ad valorem under paragraph 127, tariff act of 1913, are claimed entitled to free entry as wrought iron and scrap steel under paragraph 518.

Opinion by FISCHER, G. A. The evidence showed that some of the pipe is sold as good material to be used for guardrails, fence posts, lawn fences, building columns, flagpoles, and various other purposes, and that it is not necessary to subject the pipe to any process of remanufacture in order to make it suitable for such uses beyond threading and cutting. It was also shown that some of the pipe is consigned to the scrap heap as fit only for remanufacture, but it was impossible from the record to determine what proportion of the shipment is suitable for remanufacture. Protest overruled. Abstract 39168 cited.

No. 39852.—Protests 764091, etc., of Geo. Hirschfeld (New York).

PHOTOGRAPH MOUNTS OR HOLDERS.—Holders or mounts for photographs classified at 35 per cent ad valorem under paragraph 324, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 328 as cardboard and bristol board or at the same rate under paragraph 332 as manufactures of paper.

FISCHER, *General Appraiser:* * * * The questions of fact and of law raised by the filing of these protests were decided by this board in G. A. 7863 (T. D. 36191), and the matter is now before us as a result of a rehearing which was granted the importer for the sole purpose of introducing in evidence herein proof showing the invoice items intended to be covered by said decision.

It appears that the original record upon which said decision was predicated referred to certain numbers appearing on the invoices and purporting to represent quality numbers. It was shown, however, at the rehearing that such was not the fact: that the numbers so referred to in the record and covered by the decision merely indicated certain items of merchandise in the numerical order in which they happened to appear on the invoice: for example, "P 24" represented the twenty-fourth item in numerical order on the invoice, "P 11" the eleventh item, etc.

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We find from the record as now made up that the items on the invoices with respect to which it was our intention to sustain the claim alleged in said protests under paragraph 332 are represented on said invoices by the specific item numbers enumerated on the schedule which is hereto annexed, marked "A," and made a part of this decision, rather than by the numbers "KAV 103," "P 9," and "P 34," as specified in G. A. 7863, supra.

The last-mentioned ruling is therefore amended to correct this defect in the original record and for the purpose of enabling the collector to reliquidate the entries covered by the protests hereinabove enumerated in accordance with the intent of said decision. In all other respects, however, the decision as rendered is hereby affirmed.

At the rehearing it was further shown that invoice item numbers 2, 3, 4, and 5, covered by protest 791535, represent photograph mounts made entirely of cardboard. The claim alleged in said protest under paragraph 332 is accordingly sustained in so far as it purports to cover said item numbers; in all other respects, however, the protest is overruled.

No. 39853.—Protest 783211-57019 of Marshall Field & Co. (Chicago).

WEARING APPAREL IN PART OF BRAID.—Articles of wearing apparel invoiced as a silk muslin dress and a blue serge coat and skirt, classified as embroidered wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be not embroidered, dutiable at 50 per cent under paragraph 317, or at 35 per cent under paragraph 291.

Opinion by HOWELL, G. A. On the authority of Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464), and G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the silk muslin dress was held dutiable as silk wearing apparel under paragraph 317, and the blue serge coat and skirt as wool wearing apparel under paragraph 291, as claimed.

No. 39854.—Protests 796761, etc., of S. Katz & Co. et al. (New York).

TRIMMINGS, ETC., IN CHIEF VALUE OF BEADS OR SPANGLES.—Trimmings, ornaments, and articles of wearing apparel composed of a silk or cotton net foundation ornamented with beads or spangles, classified as appliquéd or embroidered, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as articles composed of beads or spangles at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. The goods were found to be composed in chief value of beads or spangles and were held dutiable under paragraph 333 on the authority of Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464).

BEFORE BOARD 3, JUNE 7, 1916.

No. 39855.—Protest 796635 of S. M. Bulley & Son (Savannah).

JUTE BAGGING PATCHES.

WAITE, *General Appraiser:* The merchandise imported in this case is described on the invoice as "223 bales jute wool bagging waste (bagging for cotton patches)." Just what the significance of the term "wool" is we are unable to determine. The goods were assessed for duty under paragraph 284, tariff act of 1913, which provides for—

All woven articles, finished or unfinished, and all manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or any of them, is the component material of chief value, not specially provided for in this section, 35 per centum ad valorem.

The importers claim the goods are free of duty under paragraph 408, or dutiable at 10 per cent ad valorem under paragraph 279. These paragraphs read as follows:

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408. Bagging for cotton, gunny cloth, and similar fabrics, suitable for cover cotton, composed of single yarns made of jute, jute butts, seg, Russian seg, New Z land tow, Norwegian tow, aloe, mill waste, cotton tares, or other material not bleach dyed, colored, stained, painted, or printed, not exceeding sixteen threads to square inch, counting the warp and filling, and weighing not less than fifteen oun per square yard; plain woven fabrics of single jute yarns by whatever name kno not bleached, dyed, colored, stained, printed, or rendered noninflammable by process; and waste of any of the above articles suitable for the manufacture of pa

279. Plain woven fabrics of single jute yarns, by whatever name known, bleach dyed, colored, stained, painted, printed, or rendered noninflammable by any p ess, 10 per centum ad valorem.

At the hearing the importers seemed to desire to amend their protest so as to m claim also under paragraph 384, which is the paragraph providing for waste genera They were denied right to amend the protest. The claim therefore stands under p graphs 408 and 279, as above stated.

Samples of the merchandise were introduced in evidence. They consist of pie of jute bagging of two general sizes. There are four or five pieces something ov feet wide and about 4 feet in length, and as many as 100 pieces 4 to 6 inches wide 6 to 8 inches in length. An examination of the samples shows that there is extend engthwise upon both the large and small pieces stripes of different dimensi varying from one-half inch wide to a space covered by several stripes 5 inches wi A majority of the pieces, however, have a stripe extending the full length abo inches in width. The stripe is made of colored weft or filling, generally red or bl There are a comparatively few of the stripes that are about one-half inch in widt

In order to prevail, the importers would have to show, under the first part of p graph 408, that the fabric consists of single yarns, not bleached, dyed, colored, stain painted, or printed, that it does not exceed 16 threads to the square inch counting warp and filling, and that it weighed not less than 15 ounces per square yard. casual examination will determine that the fabric is not composed of single ya It is, for the most part, woven of double threads for the filling or weft. There was evidence produced or offered at the hearing showing the weight of the yarn or count of threads. As to the weight we express no opinion. As to the count of threa it is evident that there are more than 16 threads to the square inch, counting both warp and filling, because of the double threads in the weft.

In order to prevail under the second part of paragraph 408, the importers wo have to show that the fabric is plain woven of single jute yarns. As stated above is not of single jute yarn, and it is apparent to the observer that it is not plain wov On the contrary, it is twilled, which distinguishes it in this regard. Under the sec part of the paragraph it would be necessary for the importers to show also that the fa has not been bleached, dyed, stained, printed, or rendered noninflammable by process. We are unable to determine whether it is noninflammable or not. think, however, it should be held to be dyed, colored, or stained, from what has b stated above in the description. Note In re Myers, G. A. 5105 (T. D. 23618), and I Martin, G. A. 7886 (T. D. 36340).

With reference to the claim under paragraph 279 (quoted above), we find this m chandise is not a plain woven fabric, being of fancy or twilled weave.

We conclude the importers have not made out their claim under either paragra 408 or 279; hence we see no reason for disturbing the classification made by the lector. The protest is therefore overruled.

No. 39856.—Protest 795505 of Alex. D. Shaw & Co. (New York).

VERMUTH IN BOTTLES—BREAKAGE.—In this case the discharging inspector rep 174 bottles of vermuth broken. It is claimed in the protest that an allowance of bottles should be made. The question arising is whether under paragraph 244, ta act of 1913, allowance for breakage in the case of vermuth can be had.

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Opinion by WAITE, G. A. On the authority of Wile *v.* United States (172 Fed., 164; T. D. 29778), affirmed in United States *v.* Wile (178 Fed., 269; T. D. 30449) and T. D. 33133, the protest was sustained and allowance ordered for 174 bottles broken.

No. 39857.—Protest 795042-58273 of Marshall Field & Co. (Chicago).

WATER-COLOR DESIGNS FOR CRETONNE CLOTH.—Merchandise described as original designs for cretonne cloth, drawn in water colors upon paper, classified at 15 per cent ad valorem under paragraph 376, tariff act of 1913, is claimed entitled to free entry as original drawings in water colors under paragraph 652.

Opinion by WAITE, G. A. Following G. A. 7857 (T. D. 36166), the board overruled the protest without affirming the classification.

No. 39858.—Protests 790560, etc., of Strohmeyer & Arpe Co. (New York).

BAVARIAN SAUSAGES—SCOTCH COLLOPS—PREPARATIONS OF MEAT.

WAITE, *General Appraiser:* Two protests are involved in this case. In protest 790560 the goods are described as Bavarian sausages. The sample in evidence shows they are in the shape of sausages, about the size of the well-known Frankfurter sausage, in casings similar to sausage casings, and put up in small hermetically sealed tins, eight sausages to the tin. The sausages, so-called, are surrounded by a nearly transparent liquid. Of what it consists we are not advised.

The merchandise covered by protest 792685 was invoiced as Scotch collops and described in the testimony as a preparation of meat similar to meat balls. These also are put up in tin cans, the record shows. No sample has been introduced in evidence.

Both these commodities were assessed as unenumerated manufactured articles under paragraph 385, tariff act of 1913. They are claimed to be free of duty under paragraph 545, which provides for "meats of all kinds, prepared or preserved."

The can in which the Bavarian sausages, so-called, are contained, has printed thereon the following:

Made from beef, meat-pork, and cereal added. Net weight not less than 10 ounces.

The label also stated they are "Danish sausages made in Bavarian style." The testimony with reference to this commodity is vague as to the amount of meat. It is claimed that these are an imitation of Bavarian sausage. Just what they contain we are unable to say, as there was no analysis. An inspection of one of the sausages reveals a pinkish gelatinous substance having a slight smoky taste of meat and evidently containing some cereal and flavoring. There is no evidence with reference to the quantity of each ingredient, nor the component material of chief value.

Analysis by the Government chemist of the Scotch collops is on file and in the following language:

Cooked lean meat, approximately 23 per cent (containing 74 per cent of moisture).

The return also states:

Remainder is fat, starch (or flour), water, salt, gelatin, and meat extract.

From the above we gather that there is of the lean meat 23 per cent, moisture 74 per cent, and the balance consists of fat, starch, gelatin, and meat extract. The testimony of the witness on behalf of the importers gives us no idea of the amount of meat contained in the article. There is no testimony as to the component material of chief value, although we think it may be safely assumed that the meat, or that which might be termed meat (lean, fat, and meat extract), is of more value than any other ingredient.

We do not think the importers have made out a case which would warrant us in finding that either one of these commodities is free of duty as prepared meat. We are not at liberty to classify an article under the free list by reason of the component material of chief value clause in the tariff act. In our judgment, this case is covered by the decision of the Court of Customs Appeals in United States *v.* Furuya Co. (6

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Ct. Cust. Appls., 207; T. D. 35463), which involved question of the classification of a commodity composed of beef and mushrooms put up in tins. We quote from the syllabus:

There are present in these goods two distinct articles mixed together before importation. There is no evidence of the relative value of these nor is a commercial designation shown. The mushrooms are not introduced as flavoring, but are articles of food. Neither the mixed material clause nor the rule of value in chief has any application here, and the beef and mushrooms were not entitled to free entry.

We think the same statement might be made with reference to the articles here in question, substituting the materials used for beef and mushrooms in the above quotation. The protests are overruled.

No. 39859.—Protest 784984 of Baker-Miller Shipping Co. (New York).

COMMISSIONS—ENTERED VALUE.—It is claimed here that duty should not be assessed on an item of commission included in the entered value.

Opinion by WAITE, G. A. There being no appeal to reappraisement in this case and no testimony offered to support the claim of duress, protest overruled.

No. 39860.—Protests 793970, etc., of Lombard & Co. (Boston).

GRINDSTONES.

HAY, *General Appraiser:* The merchandise which is the subject of these protests is described by the appraiser in the following words:

The merchandise, subject of protest, consists of grindstones such as are described in Abstract 35156 (T. D. 34307).

The record in the case referred to by the appraiser was not offered in evidence and is therefore not before us. See United States *v.* Eytinge & Co. (4 Ct. Cust. Appls., 266; T. D. 33486). We must therefore conclude that there were some facts before the board which warranted the holding therein made other than those that are before us in this case.

Paragraph 100 of the law of 1913 specifically provides for grindstones. The record seems to leave no open question in this case as to whether or not these are grindstones. The appraiser so states, and the entire record in the case bears out this statement. The only contention of the Government is that they are used for some purpose other than that for which grindstones are ordinarily used, and hence do not come within the specific provision for grindstones. It is difficult for us to understand the logic or the morality of this proposition. The effort of Congress to be definite and specific in its tariff provisions would be by such reasoning put to naught. If there was some doubt left by the appraiser as to whether the commodity in question is or is not a grindstone, the use to which it is put might solve that doubt and determine its customs status. If a man imports a grindstone, which the record clearly establishes to be definitely and well known as such, and then uses it for some purpose other than sharpening his scythe, or such purposes as grindstones are ordinarily put to, it ceases to be a grindstone—such reasoning does not appeal to us. If it was a grindstone when it left the foreign country its customs status will remain that of a grindstone regardless of the use to which is put. The claim in the protests under paragraph 100 is sustained and the collector directed to assess duty upon the merchandise under the specific provision for grindstones therein. As to all other claims the protests are overruled.

No. 39861.—Protests 779454-56568, etc., of International Forwarding Co. (Chicago).

FIRE BRICK.—Merchandise classified as earthenware under paragraph 79, tariff act of 1913, is claimed dutiable as fire brick under paragraph 71.

Opinion by HAY, G. A. On the authority of Abstract 37978, Abstract 37095 (T. D. 35020), Abstract 26306 (T. D. 31813), and United States *v.* Behrend (167 Fed., 317; T. D. 29499), the fire brick in question was held dutiable under paragraph 71, as claimed.

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No. 39862.—Protest 781632–5963 of Oberle & Henry (New Orleans).

CLERICAL ERROR.—It is claimed here that additional duty should not have been assessed for the reason that through clerical error in making the entry an item which was interlined upon the invoice was overlooked and the merchandise was entered at a lower value than that shown upon the invoice.

Opinion by HAY, G. A. On the authority of United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) and United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485) it was held that even if the collector could see that the importer had not entered the merchandise as it was invoiced, it does not follow as a judicial conclusion that he would know the omission was made through clerical error. Protest overruled.

No. 39863.—Protests 784600, etc., of Chas. F. Hubbs & Co. et al. (New York).

FAVORED NATIONS—WOOD PULP OR PAPER.—Certain wrapping paper is claimed entitled to free entry under section 2 of the act of July 26, 1911, by virtue of the favored-nation clause in the treaty existing between the United States and the country of exportation.

Opinion by HAY, G. A. Upon stipulation of counsel and the authority of American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434), the wrapping paper in question was held entitled to free entry.

No. 39864.—Protests 776070, etc., of Wm. A. Brown & Co., and protests 744546, etc., of Gray Bros. et al. (New York).

TEA COVERINGS.—Certain tea coverings are claimed free of duty under paragraph 627, tariff act of 1913.

Opinions by HAY, G. A. Upon stipulation of counsel tea coverings made of materials other than glass and bamboo baskets were held free of duty under paragraph 627. Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) followed.

BEFORE BOARD 2, JUNE 9, 1916.

No. 39865.—Protest 798497 of John H. Faunce (Philadelphia).

PLATINUM-RHODIUM WIRE.—Wire composed of platinum and rhodium, classified as wire not specifically provided for, at 15 per cent ad valorem, under paragraph 114, tariff act of 1913, is claimed entitled to free entry as platinum in wire, under paragraph 578.

Opinion by FISCHER, G. A. The commodity contains 90 per cent platinum and 10 per cent rhodium. It was held that the wire, being composed of 10 per cent of rhodium, is not "substantially wholly of platinum," and therefore not "platinum in wire" within the meaning of paragraph 578. Protest overruled. G. A. 7762 (T. D. 35627), affirmed in Bosch *v.* United States (7 Ct. Cust. Appls., —; T. D. 36310), followed.

No. 39866.—Protest 795664 of A. H. Ringk & Co. (New York).

SQUIRTERS—TOYS.—Trick articles known as "squirters," classified as manufactures of metal at 45 per cent ad valorem under paragraph 199, tariff act of 1909, are claimed dutiable as toys at 35 per cent under paragraph 431.

Opinion by FISCHER, G. A. On the authority of Abstract 16466 (T. D. 28374), relating to similar articles, the squirters in question were held dutiable as toys under paragraph 431.

No. 39867.—Protests 773139, etc., of Butler Bros. (St. Louis, etc.).

JAPANESE LANTERNS AND PARASOLS.—Japanese lanterns and parasols, classified as manufactures in chief value of paper at 25 per cent ad valorem under paragraph 332, tariff act of 1913, are claimed dutiable as manufactures in chief value of wood at 15 per cent under paragraph 176.

Opinion by FISCHER, G. A. Certain items covered by the protests found to be in chief value of wood were held dutiable under paragraph 176, as claimed.

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No. 39868.—Protest 794317 of Kronfeld, Saunders & Co., protests 791813, etc., of Snow's United States Sample Express Co. et al., and protests 789900, etc., of Wm. H. Stiner & Son (New York).

WEARING APPAREL IN PART OF BRAID, SPANGLED.—Articles of wearing apparel classified as appliquéd or made in part of braids, ornaments, etc., at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable according to the component material of chief value.

Opinions by HOWELL, G. A. Wearing apparel composed in chief value of silk and ornamented with spangles was found not appliquéd and held dutiable at 50 per cent under paragraph 317. On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the wearing apparel in part of ornaments, braids, nettings, trimmings, or galloons, composed in chief value of silk, was held dutiable under paragraph 317, that composed in chief value of cotton under paragraph 256, and in chief value of wool under paragraph 291. Protests sustained in part.

BEFORE BOARD 3, JUNE 9, 1916.

No. 39869.—Protests 779194, etc., of F. P. Dow Co. et al. (Seattle, etc.).

TEA COVERINGS.—Certain tea coverings are claimed to be free of duty under paragraph 627, tariff act of 1913.

Opinion by HAY, G. A. Upon stipulation of counsel all containers of tea other than glass jars, glass bowls, glass coffers, or any glass containers, and bamboo or fiber baskets, were held free of duty under paragraph 627, tariff act of 1913, as claimed. Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) followed.

(T. D. 36489.)

Steam trawls—Ships' equipment.

OTTE *v.* UNITED STATES (No. 1614).

1. A TRAWL IS EQUIPMENT FOR, NOT PART OF, A VESSEL.

A trawl is not a *part of* the vessel which draws it, but is *equipment for* the vessel.

2. TRAWLS FOR REPAIRS NOT ADMISSIBLE FREE OF DUTY.

Trawls imported for repairs are not admissible free of duty as original equipment of American vessels under subsection 5 of paragraph J of section 4, tariff act of 1913, or as repair parts of such vessels under subsection 6 of that paragraph.

United States Court of Customs Appeals, May 29, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38222.

[Affirmed.]

Comstock & Washburn and *Carroll E. Pillsbury* (*Albert H. Washburn* and *J. Stuart Tompkins* of counsel) for appellant.

Bert Hanson, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

[Oral argument April 25, 1916, by Mr. Washburn and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The appellant represents the owners of certain steam trawlers which appear to have been built at Quincy, Mass., and which are

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essentially of the same character. As the issue is finally presented in this court, the claim is made for trawl nets, so called, imported to be used as repairs upon these trawlers. The importer claimed the merchandise to be entitled to free entry under subsection 5 of paragraph J of section 4 of the act of 1913, and also subsection 6 of the same paragraph, which subsections read as follows:

J. Subsection 5. That all materials of foreign production which may be necessary for the construction of naval vessels or other vessels of the United States, vessels built in the United States for foreign account and ownership, or for the purpose of being employed in the foreign or domestic trade, and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment, may be imported in bond under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purposes no duties shall be paid thereon.

J. Subsection 6. That all articles of foreign production needed for the repair of naval vessels of, or other vessels owned or used by, the United States and vessels now or hereafter registered under the laws of the United States may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe.

Turning to the testimony for a description of these trawl nets, we quote from the testimony of Superintendent Harrison I. Cole as follows:

Q. What experience have you had in the handling and equipment of these steam trawlers?—A. Such as I have gained in the employ of this company.

Q. You have sailed in one of them yourself?—A. I have.

Q. Will you describe as best you can what is meant by a trawl?—A. Piece of apparatus resembling in a way a dredge or drag, made in the form of a bag out of manila twine and in combination with wooden boards. They are hung in such a way as to spread this trawl and kept together with wire and manila ropes and towed by the motive power of the vessel by steel wire ropes, and then the trawl is towed next to the bottom of the ocean.

Q. Have you seen them yourself attached to the trawlers owned by the Bay State Fishing Co.?—A. I have.

Q. I show you a plan of the steam trawl with the otter trawl net and ask you to state what it represents?—A. It represents a typical outline or plan of the so-called steam trawler, showing the towing vessel in its combination with the trawl itself, and the general arrangements of the attachments to the vessel, and the connection to the towing winch and deck. It shows the lead of the wires and in a conventional way the location of the trawl as it is being towed along the bottom of the ocean.

* * * * * * *

Q. I show you this plan, Mr. Cole, and ask you to state as best you can just how the trawl is attached in a permanent way to the steam trawler?

Mr. Wood. I object to the use of the word permanent.

General Appraiser Hay. Answer how it is attached.

A. The first attachment, or the underboard attachment, is to a powerful steam winch, where the warps or towing wires are closed in order to chute or lower the net to draw it on the bottom or to draw in and discharge its contents. From this winch the towing warps lead one to a frame over their fair leaders. There are two wires, one to the forward gallows frame and another to the aft gallows frame, and these wires are attached to otter boards, and from one end of the respective otter boards forward or aft the trawl warp is attached by tackle and wire rope from one trawl to another by manila or wire ropes.

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exchange one part of the trawl for another.

On cross-examination the witness testified:

Q. Are you acquainted with the operation of removing these trawls?—A. I am.

Q. You have seen it done?—A. Yes, sir.

Q. How many men does it take?—A. It might be done by two or three, but usually it is done by six men.

Q. Is it a large, bulky object?—A. In the neighborhood of 500 pounds.

Q. How long would it take to remove it from the boat?—A. Of course, if the boat was lying alongside of the dock, it might perhaps be removed in 15 or 20 minutes. That is to say, the part of the trawl which consists of this manila twine; to remove the otter boards or the frame which I consider a part of the trawl would take two or three days, because it would be a matter of removing part of the structure of the vessel.

The importer also offered testimony tending to show that these vessels were peculiarly designed to haul a trawl, and in the opinion of the witness they could not be successfully used for any other commercial purpose.

The Board of General Appraisers held that under both subsection 5 and subsection 6 regulations had been adopted by the Secretary of the Treasury by virtue of express authority contained in the statute, and that the record upon which the case was submitted failed to bring the trawls in question within the purview of either subsection 5 or subsection 6 and the regulations contained in T. D. 34150.

The original brief contended for free entry and invoked both subsection 5 and subsection 6, but since the argument, in a supplemental memorandum, it is stated by counsel for the importer—

Appellant does not press any contention under subsection 5. He relies upon subsection 6.

The meritorious question in the case is whether these trawl nets are a part of the vessel within the meaning of the terms of subsection 6, or are to be treated as equipment of the vessel. The Treasury Department ruled that they were to be regarded as equipment, and that they were similar to fish nets used on ordinary fishing vessels. The importer contends that they are to be treated as a part of the vessel as distinguished from equipment.

That the Congress intended to distinguish between equipment and the vessel itself is apparent from a reading of the two subsections above quoted. The line of distinction between equipment and the vessel is somewhat difficult to mark.

This question was considered by the Board of Naval Construction, and their report in part reads as follows:

Equipment, used in a general sense, may be defined as any portable thing that is used for, or provided in, preparing a vessel whose hull is already finished for service. It is the furniture of whatsoever nature which is put into a finished ship in equipping

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her. The Queen's Regulations and Admiralty Instructions give the following definition: "Equipment, in relation to a ship, includes the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing that is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service."

In estimating the displacement of a ship naval constructors use the term "hull and fittings" in contradistinction to "equipment," the fittings of the hull being understood to be any permanent thing attached to the hull which would remain on board were the vessel to be laid up for a long period.

Adopting these definitions, the board is of the opinion that the term "equipment" would not include donkey engines, pumps, windlasses, steam steerers, and other machinery but that it would include anchors, chain cables, boats, life-saving apparatus, nautical instruments, signal lights, and similar articles.

This construction was followed by the Customs Regulations of 1908 (art. 726), wherein the equipment of a vessel is defined as "that part which prepares her for a voyage, as rigging, sails, anchors, cables, chains, etc."

In the opinion of the Attorney General above referred to, the question presented was whether a certain steam evaporator and steam pump which were used on a dredge and firmly and permanently attached to the dredge, were a part of the vessel, and it was held that they were. Two facts appeared in this case—that the attachment was permanent and that the machinery in question was essential to the successful operation of the dredge.

It would seem that within the ordinary understanding of the term "vessel" both of these elements are essential before an article or machine in use on a ship can be regarded as part of the vessel. The office of this trawl net is to catch fish. It has to be frequently renewed and is not in any ordinary sense permanently attached to the vessel. It is easily detached and stored on board the vessel. It is no more essential to the use of the vessel in its ordinary employment than are chain cables or boats or signal lights and similar articles. We are of opinion, therefore, that these trawl nets are to be deemed a part of the equipment of the vessel and not a part of the vessel itself.

It follows that the decision of the Board of General Appraisers should be *affirmed*.

(T. D. 36490.)

Pathescopes.

UNITED STATES *v.* AMERICAN EXPRESS CO. (No. 1667).

1. CONSTRUCTION—RELATIVE SPECIFICITY—PARAGRAPHS 93 AND 94, TARIFF ACT OF 1913.

If a projection lens mounted in its frame and ready for use be regarded as an optical instrument, its frame and mountings are none the less the frame and mountings of a projection lens; and, as "frames and mountings" for projection lenses are specifically provided for in paragraph 94, tariff act of 1913, that provi-

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in paragraph 93.

2. "PATHESCOPE" FRAMES AND MOUNTINGS, HOW DUTIABLE.

A metal structure designed to serve as a support for the motive machinery, film reels, lamp house, and projection lenses of a moving-picture machine known as a "pathescope" is not dutiable under paragraph 93, tariff act of 1913 ("optical instruments and frames and mountings for the same"), but under paragraph 94 ("projection lenses, and frames and mountings for the same").

United States Court of Customs Appeals, May 29, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7826 (T. D. 35970).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

McLaughlin, Russell, Coe & Sprague and *Sharretts, Coe & Hillis* (*Thaddeus S. Sharretts* and *Edward P. Sharretts* on the brief) for appellees.

[Oral argument April 27, 1916, by Mr. Hanson and Mr. Sharretts.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Parts of a class of moving-picture machines which are known by the coined designation "pathescopes" were classified by the collector of customs at the port of New York as frames and mountings for optical instruments and assessed for duty at 300 per cent ad valorem under paragraph 93 of the act of 1913, which paragraph reads as follows:

93. Opera and field glasses, optical instruments and frames and mountings for the same; all the foregoing not specially provided for in this section, 35 per centum ad valorem.

The importer claimed that the goods were dutiable either under paragraph 94 at 25 per cent ad valorem as frames and mountings for projection lenses or under paragraph 167 as articles of metal. Paragraphs 94 and 167 are as follows:

94. Surveying instruments, telescopes, microscopes, photographic and projection lenses, and frames and mountings for the same, 25 per centum ad valorem.

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

The Board of General Appraisers sustained the protest and the Government appealed.

It appears from the record that the merchandise imported is a metal structure designed to serve as a support for the motive machinery, film reels, lamp house, and projection lenses of a moving-picture machine. The lamp house contains a concave mirror, electric lamp,

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and condenser lens. When the machine is in operation the film, bearing a series of pictures, is unwound from one reel and wound up on the other after being carried in front of the condenser. There the light of the lamp, reflected by the mirror and concentrated by the condenser, illumines the film as it passes and reproduces on a screen an enlargement of the pictures thrown by means of the projection lens.

The Government contends that the moving-picture machine of which the importation is a part is an optical instrument and that it is something more than a projection lens; that is to say, a projection lens mounted on a frame with the appliances necessary to make it ready for use ceases to be a projection lens and becomes a moving-picture machine, which, it is claimed, is an optical instrument. From that as a premise it is argued that the frame designed to support the projection lens and the appliances necessary to make it useful is not the frame of a projection lens, but the frame of an optical instrument. The difficulty with that argument is that Congress saw fit to provide in paragraph 94 for "projection lenses, and frames and mountings for the same," and therefore must have contemplated such a thing as a projection lens having a frame and mountings, and consequently a projection lens mounted and ready for use. True, the metal tube into which the lens is fitted might be called a mounting or even a frame in the sense that it incloses the lens as a frame incloses a picture. If that restricted meaning, however, is given to the terms "frames" and "mountings" when applied to projection lenses, the same restricted meaning must be given to them when applied to the surveying instruments and telescopes provided for in the same paragraph, and that we do not think can be done, inasmuch as surveying instruments and telescopes are certainly something more than mere lenses. (See "Telescope," Standard Dictionary and Encyclopedia Britannica.) If frames and mountings for surveying instruments and telescopes mean the supporting structure and certain adjuncts of those instruments required for their use, then they must mean the supporting structure and certain adjuncts of a projection lens required for its use.

In our opinion, the evidence in this case very clearly establishes that the metal support, the reels, the electric lamp, the mirror, the condenser, and the motive machinery are all instrumentalities designed to aid and assist the projection lens in producing on a screen an enlargement of the small pictures on the film, and that without such appliances the projection lens would be wholly ineffective for that purpose. Unquestionably the completed article would be a moving-picture machine and possibly it might be regarded as an optical instrument. Nevertheless, it would be at the same time a projection lens supported by the frame and fitted with the adjuncts which make it available for use. From that it follows that even if

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instrument, it is none the less the frame for a projection lens, and as frames for projection lenses are provided for in paragraph 94, that provision must be preferred to the less specific and more comprehensive provision in paragraph 93 covering frames for optical instruments.

For these reasons we hold that the frames in question are dutiable as frames for projection lenses at 25 per cent ad valorem under paragraph 94 rather than as frames for optical instruments under paragraph 93.

The decision of the Board of General Appraisers is *affirmed*.

(T. D. 36491.)

Metal whistles.

SCHOVERLING, DALY & GALES *et al.* *v.* UNITED STATES (No. 1632).

POLICEMEN'S WHISTLES OF METAL, HOW DUTIABLE.

Policemen's whistles of metal are not dutiable under paragraph 356, tariff act of 1913, as metal articles designed to be carried on or about or attached to the person, but under paragraph 167 as articles or wares composed wholly or in chief value of metal.

United States Court of Customs Appeals, May 29, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38257.

[Reversed.]

Hatch & Clute (*Edward S. Hatch* and *Walter F. Welch* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

[Oral argument February 10, 1916, by Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

These importations were of policemen's whistles. They were rated for duty by the collector of customs at the port of New York as articles valued at over 20 cents per dozen pieces, composed in chief value of metal and designed to be carried on or about or attached to the person, under the provisions of paragraph 356 of the tariff act of 1913. The importers protested and are the appellants here. They make claim that the merchandise is properly dutiable as articles or wares composed wholly or in chief value of metal under the provisions of paragraph 167 of the act.

Upon the authority of the following decisions rendered by this court, American Bead Co. and H. Wolff & Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36465); United States *v.* Sussfeld, Lorsch & Co. (7 Ct. Cust. Appls., —; T. D. 36454); United States *v.* American

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Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456); H. Bischoff & Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36458); United States *v.* Malhami & Co. and F. W. Woolworth & Co. (7 Ct. Cust. Appls., —; T. D. 36493), the decision of the Board of General Appraisers is *reversed.*

(T. D. 36492.)

Crushed currants.

STONE & CO. *v.* UNITED STATES (No. 1702).

CURRANTS, GROUND, HOW DUTIABLE.

Currants which have been ground to a pulp for use in making wine have lost their identity. They are not dutiable as "currants" under paragraph 218, tariff act of 1913, but as "fruits, including berries, when dried, desiccated, evaporated, or prepared in any manner" under paragraph 217.

United States Court of Customs Appeals, May 29, 1916.

APPEAL from Board of United States General Appraisers (Abstract 39257).

[Reversed.]

Charles E. McNabb for appellants.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

[Oral argument May 17, 1916, by Mr. McNabb and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The merchandise is described by the appraiser as currants, crushed or broken. A member of the importing firm, testifying before the board, stated that the merchandise was made from currants by grinding in a mill like a coffee mill. Undoubtedly, though not apparently, the importation is a material made from currants reduced to a pulp for the use of making wine. The Board of General Appraisers deemed a previous decision by them as controlling. The decision referred to was Abstract 16814 (T. D. 28429), affirmed by consent by the United States Circuit Court for the Southern District of New York in Graeco-American Currant & Supply Co. *v.* United States (T. D. 29106), suit 5072. That case arose under the tariff act of 1897; the competing provisions *in pari materia* were identical with those here. The issue presented, however, in that case was as between the provision for "currants, Zante or other," and the unenumerated provision of the act. In this case, however, the competing provisions are the former for "currants, Zante or other," in paragraph 218 of the tariff act of 1913, and the provision of paragraph 217 of said act providing for "fruits, including berries, when dried, desiccated, evaporated, or prepared in any manner." Other claims are made, but by the court deemed immaterial.

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An examination of the sample is convincing that the mater been ground as related by the importing witness; nevertheles does not differentiate it from the material the subject of the de *supra*. The grinding may have been deemed a crushing. grinding or crushing have been held to be a process of manuf Nor is a change of name essential, nor need the article be in tl dition as imported ready for its ultimate use. Myers *v.* United (1 Ct. Cust. Appls., 506, 508; T. D. 31531); United States *v.* I (2 Ct. Cust. Appls., 167, 169; T. D. 31680); United States *v.* Shun & Co. (2 Ct. Cust. Appls., 388, 389; T. D. 32113); Tide Oil Co. *v.* United States (171 U. S., 210, 216, 217); United St Dudley (174 U. S., 670); United States *v.* Graser-Rothe (16 Rep., 205); 27 Op. of Atty. Gen. (68, 74).

The importation has completely lost its identity as currants. an indeterminate mass or pulp. It is, in fact, a material prep made from currants, the ultimate use of which is in the manu of wines. Its general and more diversified uses as currants ha been destroyed or limited.

The cited provision of paragraph 217 seems in language to precisely to such materials, identifying the same by reference t origin. It speaks of fruits and berries which have been process another than their natural condition. It aptly describes that tion of berries into which this was processed. That it was the of Congress to therewithin include all such fruits, berries, and rials is evinced by the inclusive word "all." McLean *v.* United (226 U. S., 374, 383). This court has observed the legal disti between fruits and the pulp or paste made from such fruits in States *v.* John Duncan's Sons *et al.* (2 Ct. Cust. Appls., 38 T. D. 32097), wherein it is recited:

> Cases cited in which a reduction of fruits to pulp, such as date paste or nuts, had so changed the identity of the original articles as to place them und ent classifications are not of much value in determining the question here pr for we have strong evidence that the tamarinds of commerce are tamarinds in as were those in the present case.

Congress, likewise, in paragraph 217, has with much care a cision provided different rates of duties for different conditi fruits and berries, the line of difference between which classifi is not more narrow than the line of distinction between the nent provision herein of that paragraph and the provisions o graph 218.

The court is of the opinion that the imported merchan assessed was currants, which, by being so far processed or factured as to become the material for another manufacture lost their identity as currants; and, that while accurate and ligent description of the merchandise requires that it be refe

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as currants, crushed, or currants, ground, it, in fact, is no longer currants as commonly understood. The material made thereby, however, is precisely within the provisions of paragraph 217 in that it is berries (currants), "prepared" by grinding, thereby becoming a material for the manufacture of wine.

Reversed.

(T. D. 36493.)

Rosaries.

UNITED STATES *v.* MALHAMI & CO. (No. 1640). UNITED STATES *v.* WOOLWORTH CO. (No. 1642).

1. EVIDENCE—JUDICIAL KNOWLEDGE.

The court does not judically know that rosaries are not "designed to be worn on apparel or carried on or about or attached to the person."

2. EVIDENCE—COLLECTOR'S CLASSIFICATION PRESUMPTIVELY CORRECT.

Since the evidence does not show that the rosaries at bar are not "designed to be worn on apparel or carried on or about or attached to the person," the collector's classification of them as such articles under paragraph 356, tariff act of 1913, must stand.

United States Court of Customs Appeals, May 23, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38523.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

McLaughlin, Russell, Coe & Sprague, and *Sharretts, Coe & Hillis* (*Thaddeus S. Sharretts* and *Edward P. Sharretts* on the brief) for appellees.

[Oral argument February 16, 1916, by Mr. Hanson and Mr. Sharretts.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The present appeal involves two protests, the merchandise in each instance being rosaries which were imported under the tariff act of 1913.

The collector assessed duty upon the articles at the rate of 60 per cent ad valorem under the provision for "articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, * * * composed of metal," in paragraph 356 of the act.

The importers protested, claiming assessment of the articles at various alternative rates as manufactures composed in chief value of metal, wood, or other enumerated materials.

The protest was submitted to the Board of General Appraisers, who sustained the same. The Government appealed from this decision.

The present record seems to indicate that the articles now upon appeal are composed in chief value of metal, and it is not denied that

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merchandise under paragraph 356, as above set out, and the assessment thereof as proposed by the importers under paragraph 167 of the act as manufactures composed in chief value of metal.

The following is a copy of the two paragraphs just cited:

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

356. Jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces, 60 per centum ad valorem; rope, curb, cable, and fancy patterns of chain not exceeding one-half inch in diameter, width, or thickness, valued above 30 cents per yard; and articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, card cases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones or imitation pearls, 60 per centum ad valorem. Stampings, galleries, mesh and other materials of metal, whether or not set with glass or paste, finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles in this paragraph, 50 per centum ad valorem.

The record now before the court contains no testimony of any kind whatever, nor are there any samples exhibited in the case. The only information therefore which we possess concerning the character of the merchandise is that which may be derived from its name, from the official statements of the appraiser, and from the collector's assessment upon the same.

The appraiser reported the articles involved in one of the protests to be "rosaries designed to be worn on apparel or carried on or about or attached to the person, composed wholly or in chief value of metal, or of metal set with precious, semiprecious, or imitation precious stones, pearls or imitation pearls, cameos, coral or amber, valued above 20 cents per dozen pieces." In answer to the other protest the appraiser reported the articles to be "rosaries designed to be worn on apparel or carried on or about or attached to the person, composed wholly or in chief value of metal, valued above 20 cents per dozen pieces."

It must of course be assumed in the first instance that the collector's assessment of the merchandise was correct both in fact and law, and the only question in the case is whether the foregoing description of the articles rebuts that presumption, and sufficiently estab-

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lishes the correctness of the competing assessment proposed by the importers.

The importers contend that rosaries are not "designed to be worn on apparel or carried on or about or attached to the person" in like manner with the articles which are enumerated as examples in paragraph 356. In this connection the importers' counsel say:

Rosaries are a class of articles that stand all alone. They are separate and distinct from all other descriptions of merchandise, and are intended solely for devotional purposes, never for display. Indeed to make a display of them would defeat the very purpose for which they are intended. They are always carried in some hidden receptacle, such as the pocket, reticule, or prayer book, and are only used during prayers. The rosaries in question are wanting in all of the essential particulars required by the Court of Customs Appeals in the case of United States *v.* Gallagher & Ascher (T. D. 35343), *supra*, to bring them within the provision of paragraph 356 for other articles, and hence are not included therein.

The importers must, of course, depend upon "common knowledge" as the basis of their foregoing statements, since the only other source of information in the present case is the appraiser's report above referred to, which distinctly contradicts these statements. In coming to ascertain the uses of rosaries which are within common knowledge, we give the following definitions of the term taken from approved dictionaries:

Standard:

Rosary.—A string of beads for keeping reckoning or count of devotions, as among the Mohammedans, Buddhists, and certain bodies of Christians; also, a similar string worn on the person for ornament or for fingering in pastime. 2. R. C. Ch. (1) Specifically, a string of beads used in devotions for counting a specific series of prayers, each bead having the name of the prayer it represents, aves being signified by small beads and the paternoster and gloria by a large one.

The rosary is made up of groups called decades, of which the common or *Dominican rosary* contains 15, each decade containing 10 aves preceded by a paternoster and followed by a gloria. The decades are commonly joined to 3 aves and a paternoster and a cross or medal, on which the Apostles' Creed its recited. The rosary is also divided into three divisions of five decades each, called *chaplets* or *coronæ*. The term *lesser* rosary is applied also to a chaplet.

* * * * * * *

(2) The series of prayers commonly recited on these beads, arranged in a definite order and consisting of aves, paternosters, and glorias, each decade commemorating a scene from the life of Christ and the Virgin Mary. * * *

Century:

Rosary.—5. A string of beads carried about the person, either for mere pastime, as to occupy the fingers, or for reckoning, especially in numbering the prayers offered up at fixed times of the day.

Mohammedans carry rosaries with them for both these purposes, wearing them in the girdle or carrying them in the hand at all hours of the day.

6. Specifically, in the Rom. Cath. Ch. (b) A string of beads of various sizes representing the same number of aves, paternosters, and glorias, respectively, used for marking off these prayers. * * *

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either for ornament or for mere personal convenience by way of occupying the fingers. The definitions are sufficient authority for the conclusion that within common knowledge some articles bearing the name of rosaries are worn upon the person for mere personal convenience and adornment. This conclusion finds additional support in the statement made by the appraiser that some of the present articles are set with precious or semiprecious stones, or with imitations thereof. In the face of the foregoing definitions and of the appraiser's reports we do not feel authorized to say that articles bearing the name of rosaries are "always carried in some hidden receptacle, such as the pocket, reticule or prayer book, and are only used during prayers." And if it be true, as stated by the foregoing definitions and also by the appraiser, that certain forms of rosaries are in fact designed to be worn upon the person for mere personal convenience and adornment, we think that such articles would be within the descriptions of paragraph 356, under which the present merchandise was assessed. In such case the present articles should be assessed under that paragraph unless they be found to be more specifically described by some other provision of the same act. It is, however, at once apparent that the provisions of paragraph 356, *supra*, are more specific in their application to such merchandise as comes within them than the general provisions of paragraph 167 for articles composed in chief value of metal.

We therefore conclude that the present record does not sustain the action of the board in setting aside the collector's assessment of the articles now in question.

At the oral argument of the case the Government insisted that the present protests were defective because of multifariousness and contended that the same should be overruled for that reason. We may say upon this subject that the various alternative claims in the protest are mostly confined to the question as to what is the component material of chief value in the articles. In the absence of more specific information concerning the different materials of which the articles in question are composed we can not say that the importers' claims in that behalf were multifarious.

In the Government's brief it is claimed that in case the present articles are found to be outside of paragraph 356, *supra*, they should be assessed as articles composed in chief value of beads under paragraph 333 of the act. Upon this subject, however, we may say, in addition to what has already been said, that there is no proof in the record that the present articles are composed in chief value of beads.

In accordance with the foregoing views the decision of the board is *reversed*.

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(T. D. 36494.)

Drawback on confectionery.

Drawback on confectionery manufactured by the Boston Confectionery Co., of Boston, Mass., with the use of imported materials and materials containing imported materials.

TREASURY DEPARTMENT, *June 13, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on confectionery manufactured by the Boston Confectionery Co., of Boston, Mass., with the use of imported nuts and fruits, refined sugar produced in whole or in part from imported raw sugar, and sweetened chocolate produced by Walter Baker & Co. (Ltd.) with the use of imported refined raw sugar or refined sugar manufactured in whole or in part from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated May 4, 1916, transmitted herewith, showing, in the case of each lot of confectionery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and kind of confectionery produced, and the character, quantity, and identity of each kind of imported material and of each kind of material manufactured with the use of imported material appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of imported materials and of materials containing imported materials which may be taken as a basis for the allowance of drawback shall not exceed the quantities appearing in the exported confectionery, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on confectionery exported on or after April 17, 1916.

Respectfully, ANDREW J. PETERS,
(100732-9.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36495.)

Drawback on plasters and medicated gauze.

Drawback on plasters and medicated gauze manufactured by Seabury & Johnson, of New York, N. Y., with the use of various imported materials.—T. D. 24126 of December 29, 1902, T. D. 28302 of July 1, 1907, and T. D. 31325 of February 18, 1911, revoked.

TREASURY DEPARTMENT, *June 12, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on isinglass plasters,

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York, N. Y., with the use of imported silk piece goods, cotton piece goods, woven-edge gauze, and crude gum chicle.

A manufacturing record shall be kept, showing, in the case of each lot of imported crude gum chicle refined, the quantity of imported chicle used, the quantity of refined chicle obtained therefrom, and the quantity of waste resulting. At the end of each manufacturing period, which shall not exceed three months in duration, there shall be filed an abstract from the manufacturing record and certificate of manufacture, showing the total quantity and identity of imported crude gum chicle refined during the period, the total quantity of refined chicle obtained therefrom, and the quantity of refining waste resulting. The refined gum chicle used in the manufacture of the exported plasters shall be identified in the drawback entry with the period in which the same was produced.

In liquidation, the quantities of imported materials which may be taken as a basis for the allowance of drawback may equal the quantities appearing in the exported article, as shown by the sworn statement and schedule of the manufacturers, dated May 24, 1916, transmitted herewith, with an addition, in the case of imported crude gum chicle, to compensate for waste in refining, as shown by the abstract from the refining record prescribed above.

Supplemental sworn schedules, covering the articles specified herein, showing changes in the quantities of imported materials used, the size of the articles or manner of packing, etc., may be filed, and upon verification of such supplemental schedules drawback may be allowed on the articles manufactured and packed in accordance therewith.

T. D. 24126 of December 29, 1902, T. D. 28302 of July 1, 1907, and T. D. 31325 of February 18, 1911, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(84255.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36496.)

Picture frames—Plated articles.

Picture frames in chief value of wood, with 25 per cent or more of the exposed surface covered with gold leaf, dutiable at the rate of 50 per cent ad valorem under paragraph 167, tariff act of 1913, as articles plated with gold.

TREASURY DEPARTMENT, *June 13, 1916.*

SIR: The department is in receipt of your letter of the 5th instant, relative to the classification of certain gilded frames for oil paintings.

It appears that the frames are composed of wood, paste, and gold leaf, wood chief value.

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As wood is the component material of chief value, the articles would not come within the first provision of paragraph 167 of the tariff act for articles "in part of * * * gold." (T. D. 34182, third paragraph; also T. D. 36308 relative to penholder racks or stands.)

The second provision of paragraph 167, however, reads "articles or wares plated with gold or silver," and this would appear to include articles so plated, whether or not metal is the component material of chief value, and the department has so held with respect to articles of wood and metal with the metal parts so plated. Even though the provision in question of paragraph 167 and the provision of paragraph 176 for manufactures of wood were equally specific, the higher rate would be applicable by reason of the provision of paragraph 386 that of two rates applicable the higher should be assessed.

With respect to the proportion of plating required in the above T. D. 36308, the United States Court of Customs Appeals stated, with respect to certain hand bag or purse frames, that it was "enough that there is a substantial portion of the article plated" to bring them within the provision for plated articles in paragraph 167, and for this purpose you have been previously advised that you should consider 25 per cent or more of the exposed surface of the article as sufficient plating to bring it within the said provision for articles plated with gold or silver, in accordance with the last paragraph of T. D. 34182.

The department is of the opinion that the above rulings should be applied also to picture frames of wood, etc., covered with gold leaf. You will, therefore, assess duty on frames of the character in question, of which 25 per cent or more of the exposed surface is so covered, imported or withdrawn from warehouse 30 days after the date hereof, at the rate of 50 per cent ad valorem as articles plated with gold under paragraph 167 of the tariff act of 1913.

Respectfully, ANDREW J. PETERS,
(64321.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36497.)

Drawback on syringes.

Drawback on graduated syringes either plain or equipped with metal finger clips, chains, and caps, and on blank syringes with metal finger clips, chains, and caps, produced by the MacGregor Instrument Co., of Boston, Mass., with the use of imported blank ground-glass syringes.

TREASURY DEPARTMENT, *June 13, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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and caps, and on blank syringes equipped with metal finger clips, chains, and caps, produced by the MacGregor Instrument Co., of Boston, Mass., with the use of imported blank ground-glass syringes.

A record shall be kept, showing, in the case of each export lot of syringes produced, the number and character of syringes of each size produced and the number and identity of imported blank ground-glass syringes of each size appearing therein. A sworn abstract from such record shall be filed with the drawback entry.

The allowance for each syringe exported shall not exceed one imported blank ground-glass syringe of the size appearing therein, as shown by the sworn abstract from the producer's record.

Drawback may be allowed under these regulations on syringes exported on or after December 11, 1915.

Respectfully, ANDREW J. PETERS,
(104420.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 36498.)

Conduits of clay and carborundum.

So-called conduits consisting of pipes or tubes and angles made of fire clay and carborundum and used in the construction of ovens for baking chinaware dutiable under paragraph 81, tariff act of 1913, as articles composed of earthy or mineral substance not specially provided for, whether in chief value of clay or carborundum, at the rate of 20 per cent ad valorem if not decorated.

TREASURY DEPARTMENT, *June 15, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 31st ultimo further in regard to the classification of certain so-called conduits consisting of pipes or tubes and angles made of fire clay and carborundum and used in the construction of ovens for baking chinaware.

At Philadelphia it appears that the merchandise is all assessed with duty at the rate of 20 per cent ad valorem under paragraph 81 of the tariff act of 1913 as articles composed of earthy or mineral substance not specially provided for. It appears that this practice agrees with that at your port as to the articles when composed in chief value of carborundum, but it further appears that it has been your practice to assess duty on the articles composed in chief value of clay not glazed, enameled, painted, vitrified, ornamented, or decorated in any manner at the rate of 10 per cent ad valorem as fire brick not glazed, etc., under paragraph 71 of the tariff.

You now submit a report from the appraiser at your port with respect to the articles in chief value of clay, from which it appears

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that they are not commonly or commercially known as fire brick and the appraiser's office and your office agree with the classification thereof at 20 per cent ad valorem under paragraph 81.

The department concurs in the classification of the articles under paragraph 81, whether in chief value of clay or carborundum, and you will assess duty thereon at the rate of 20 per cent ad valorem, if not decorated, under the said paragraph.

Respectfully, ANDREW J. PETERS,
(104492.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36499.)

Common carrier.

Approving bond of the administrators of the estate of William H. Follette as a common carrier for the transportation of dutiable merchandise.

TREASURY DEPARTMENT, *June 17, 1916.*

SIR: The bond, in duplicate, transmitted with your letter of the 8th instant, of the administrators of the estate of William H. Follette as a common carrier of dutiable merchandise, said bond being in lieu of that approved May 5, 1915, of William H. Follette, is hereby approved and copy thereof herewith inclosed to be placed upon your files.

The fact and date of the rebonding of the route should be noted on the copy of the bond approved May 5, 1915, now in your possession, which should be retained without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(103655.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 36500.)

Common carrier.

Discontinuance of the bonded route of the Western Transit Co. as a common carrier of dutiable merchandise.

TREASURY DEPARTMENT, *June 17, 1916.*

SIR: In view of the request of the Western Transit Co. and of the statements made in your letter of the 9th instant relating thereto, the discontinuance of the bonded route of said company for the transportation of dutiable merchandise and for the lading and unlading of bonded goods under the act of February 13, 1911, is hereby author-

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in your possession, and retain the same without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(50513.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36501—G. A. 7922.)

Jacquard figured laces.

UPHOLSTERY GOODS—LACES CHIEFLY USED AS CURTAINS.

Jacquard figured flax laces which are chiefly used for making lace window curtains are properly dutiable at the rate of 35 per cent ad valorem under the provision in paragraph 258, tariff act of 1913, for "Jacquard figured upholstery goods, composed wholly or in chief value of cotton or other vegetable fiber," and not as "laces, * * * of whatever yarns, threads, or filaments composed."—Carter *v.* United States (6 Ct. Cust. Appls., 253; T. D. 35475) cited and followed.

United States General Appraisers, New York, June 14, 1916.

In the matter of protest 779132 of Snow's United States Sample Express Co. (Ltd.) against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Crim & Wemple (*George C. Winne* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

HOWELL, *General Appraiser:* The merchandise involved consists of flax laces, which are Jacquard figured. Duty was assessed thereon by the collector at the rate of 60 per cent ad valorem under the provisions of paragraph 358, tariff act of 1913, which paragraph reads as follows:

358. Laces, lace window curtains not specially provided for in this section, coach, carriage, and automobile laces, and all lace articles of whatever yarns, threads, or filaments composed; handkerchiefs, napkins, wearing apparel, and all other articles or fabrics made wholly or in part of lace or of imitation lace of any kind; embroideries, wearing apparel, handkerchiefs, and all articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or tamboured, appliquéd, or scalloped by hand or machinery, any of the foregoing by whatever name known; edgings, insertings, galloons, nets, nettings, veils, veilings, neck rufflings, ruchings, tuckings, flouncings, flutings, quillings, ornaments; braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; trimmings not specially provided for; woven fabrics or articles from which threads have been omitted, drawn, punched, or cut, and with threads introduced after weaving, forming figures or designs, not including straight hemstitching; and articles made

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in whole or in part of any of the foregoing fabrics or articles; all of the foregoing of whatever yarns, threads, or filaments composed, 60 per centum ad valorem.

The importers claim that these laces are dutiable at the rate of 35 per cent ad valorem under the provision in paragraph 258 for "tapestries, and other Jacquard figured upholstery goods, composed wholly or in chief value of cotton or other vegetable fiber."

The record shows that the laces here in question, which, as we have said, are Jacquard figured, are chiefly used in the making of lace curtains, and such use brings them within the provision for "Jacquard figured upholstery goods." Carter *v.* United States (6 Ct. Cust. Appls., 253; T. D. 35475).

The Assistant Attorney General contends, however, that the Carter case is not controlling, inasmuch as paragraph 358 provides, as he says, for "laces by whatever name known." We think this contention arises from a misreading of paragraph 358. It will be observed, as stated in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), that—

With reference to the things to which it relates, the paragraph naturally subdivides into the following clauses, stated in the order of their appearance therein: (1) Laces, window curtains of lace not specially provided for, and all lace articles of whatever yarns, threads, or filaments composed; (2) handkerchiefs, napkins, wearing apparel, and all other articles or fabrics made wholly or in part of real or imitation lace; (3) embroideries, wearing apparel, handkerchiefs, and all fabrics or articles embroidered, tamboured, appliquéd, or scalloped, by hand or machinery, any of the foregoing by whatever name known; (4) edgings, insertings, ruchings, tuckings, flounces, and other similar articles, veils, veilings, nets, nettings, and ornaments; (5) loom-woven braids ornamented in the process of weaving or made by other machinery or by hand not specially provided for; (6) trimmings not specially provided for; (7) woven fabrics or articles with threads omitted, cut, drawn, or punched, having new threads introduced and containing figures or designs, as therein specified; (8) articles made in whole or in part of the foregoing fabrics or articles; (9) declares that all the foregoing of whatever yarns, threads, or filaments composed shall be assessed at 60 per cent ad valorem.

From this analysis of the paragraph it is apparent that the phrase "by whatever name known" has reference only to the articles found in the third subdivision, and in no way enlarges the provision for "laces" which appears in the first subdivision of the paragraph.

The Assistant Attorney General contends, furthermore, that the reference in paragraph 358 to lace window curtains, indicates that goods in the nature of curtain materials are within the contemplation of that paragraph. If that argument is sound as to laces, it is equally sound as to the nettings which were passed upon in the Carter case, *supra,* for both laces and nettings of the character here in question are curtain materials, and the court held that it was the use of the nettings as curtain materials which took them out of the *eo nomine* provision for "nettings" and placed them within the provision for "Jacquard figured upholstery goods."

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The intent appears to be manifest to make the use to which a narrowly prescribe class of goods is devoted the test of its classification. This makes the provision mo narrow than the broad term "nets, nettings." In the first place, the articles provide for under this provision must be Jacquard figured; secondly, they must be upholstery thirdly, they must be composed wholly or in chief value of cotton or other vegetabl fiber, and "any of the foregoing in the piece or otherwise" is provided for. Obviousl these provisions must have been intended to invade the other paragraphs of the tari act and to remove or leave out of such paragraphs the goods answering to this particul and specific description. It describes the goods in the piece, and restricts them t upholstery goods composed wholly or in chief value of cotton, Jacquard figured. W think this provision, which restricts its operation to goods whose chief use is as upho stery goods, the precise and restricted character of such upholstery goods being exactl defined by the terms of the paragraph, brings within its provisions an article whic might otherwise be appropriately termed nets or nettings.

We think all that the court has said as to the nettings is equall applicable to the laces in the case at bar, and the protest is therefor accordingly sustained.

(T. D. 36502—G. A. 7923.)

Jacquard laces and nettings.

LACES—NETTINGS—JACQUARD FIGURED MANUFACTURES OF COTTON.

Jacquard figured cotton laces and nettings are properly dutiable under the *nomine* provision for "laces" and "nettings" in paragraph 358, tariff act of 191 rather than as "Jacquard figured manufactures of cotton" under paragraph 258.—Wilson *v.* United States (6 Ct. Cust. Appls., 255; T. D. 35476) cited and followed.

United States General Appraisers, New York, June 14, 1916.

In the matter of protest 784174 of Levi, Sondheimer & Co. against the assessment of duty by the collect of customs at the port of New York.

[Affirmed.]

Walden & Webster (*Henry J. Webster* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A. not participating).

HOWELL, *General Apprasier*: The merchandise consists of Jacquar figured laces and nettings made of cotton, which were assessed fo duty at the rate of 60 per cent ad valorem under paragraph 358 tariff act of 1913, the pertinent provision of which reads as follows:

358. Laces, lace window curtains not specially provided for in this section, coach carriage, and automobile laces, and all lace articles of whatever yarns, threads, filaments composed; * * * and all other articles or fabrics made wholly or i part of lace or of imitation lace of any kind; * * * nets, nettings, * * * all of th foregoing of whatever yarns, threads, or filaments composed, 60 per centum a valorem.

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Various claims are made in the protest, but they have all been abandoned except the claim that the goods are dutiable at the rate of 30 per cent ad valorem under the provision in paragraph 258 of said act for "all other Jacquard figured manufactures of cotton or of which cotton is the component material of chief value."

The question for decision, which is purely one of law, is whether or not the designation in paragraph 258, "all other Jacquard figured manufactures of cotton" more specifically describes the merchandise than the *eo nomine* designations of "laces" and "nettings" in paragraph 358. This is not a new question. It was passed upon by this board in Wilson's case, G. A. 7686 (T. D. 35140), and decided adversely to the importers. The merchandise in that case consisted of Jacquard figured laces and nettings, and in its decision, after stating that there was no dispute that the articles were specifically provided for in paragraph 358, the board said:

> The importers contend, however, that as these articles are Jacquard figured, and and the provision in paragraph 258 for "Jacquard figured manufactures of cotton" is limited or restricted to such articles as are composed wholly or in chief value of cotton, that provision is more specific than the provision in paragraph 358 for nettings, flouncings, edgings, insertings, and other articles of "whatever yarns, threads, or filaments composed." We can not assent to this view; nor do we deem it necessary to discuss this claim at length, inasmuch as we have fully considered similar claims in a number of recent cases. In Gardner & Co.'s case, G. A. 7609 (T. D. 34819); Sachs & Co.'s case, G. A. 7618 (T. D. 34858); and Bauer's case, G. A. 7630 (T. D. 34903), the board held that cotton towels, woven figured cotton cloth, and cotton table damask, although woven on Jacquard looms, were more specifically provided for under the *eo nomine* enumeration of such articles than under the provision for "Jacquard figured manufactures of cotton." In Downing & Co.'s case, G. A. 7660 (T. D. 35047), it was also held that the provision for "Jacquard figured manufactures of cotton" was less specific than the provision for "articles * * * made from * * * velvets." In consonance with our ruling in those cases we hold that the provision for "nettings," "flouncings," "edgings," and "insertings" in paragraph 358 is more specific than the provision for "Jacquard figured manufactures of cotton" in paragraph 258 of said act.

On appeal the decision of the board was affirmed by the Court of Customs Appeals in Wilson *v.* United States (6 Ct. Cust. Appls., 255; T. D. 35476). In affirming the decision of the board holding that the articles were more specifically provided for in paragraph 358 than in paragraph 258, the court said in part:

> Now, laces, lace articles, and articles or fabrics made wholly or in part of lace, and of whatever yarns, threads, or filaments composed, are a peculiar, particular, and specific kind of figured goods. Jacquard figured manufactures of cotton, on the other hand, may be either laces or figured goods of cotton which are not lace at all, and consequently a provision for Jacquard figured manufactures of cotton must be regarded as more comprehensive than a provision which is limited to that particular class of figured goods known as laces, lace articles, or articles or fabrics composed wholly or in part of lace.

Counsel for the importers now make the point that this interpretation renders the provision relied on in paragraph 258 inoperative.

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residuary provision in paragraph 266 for "manufactures of cotton, or of which cotton is the component material of chief value," the rate of duty in this latter paragraph being 30 per cent, which is the same rate as that named in the provision in question. This point was made in the Wilson case, *supra*, and seems to have been fully considered and discussed by the court. But counsel for the importers here, who also represented the importers in the Wilson case, urge that there was no proof in that case that the construction adopted by the court would leave any part of the law inoperative, and their claim in that respect was treated by the court as a mere assumption. An effort has therefore been made in this case to sustain the claim by proof. While it is true that the court stated that the proposition was based upon an assumption, it immediately added:

> That assumption, even if it were true, can not be accepted as conclusive of the intention of Congress to subject to the operation of the clause in question all Jacquard figured goods not elsewhere provided for as Jacquard figured, inasmuch as the provision may have been passed merely as a precautionary measure to cover manufactures and contingencies which the Congress felt that it was unable to foresee. Moreover, it can not be safely said that an interpretation which denies to the clause "all other Jacquard figured manufactures of cotton" the specificity of an *eo nomine* enumeration would of necessity leave the provision without effect for lack of goods to which it might be applied. Indeed, such an examination of the act as we have been able to make inclines us at this time to a contrary view. That Congress had no intention of making paragraph 258 all controlling in so far as Jacquard figured manufactures of cotton are concerned we think is sustained in some measure by the fact that such an interpretation of the provision would result in the anomaly of subjecting to a duty of only 30 per cent ad valorem laces, nets, nettings, veils, veilings, and flouncings figured on the Jacquard machines, whereas inferior laces and plain nets, nettings, veils, veilings, and flouncings would continue to bear the high rate of 60 per cent ad valorem.

The proof in this case clearly shows that there are laces and nettings which are made on machines other than those having the Jacquard attachment to which paragraph 358 would apply if the Jacquard laces and nettings should be classified for duty under paragraph 258, but we do not think this is a sufficient reason for arriving at a different conclusion from that reached in the previous case. Indeed, we think it must have been apparent to the court that there are laces and nettings which are made on machines other than those having the Jacquard attachment, and therefore there would be laces and nettings which would fall within the provisions of paragraph 358 even if those made on machines with the Jacquard attachment were excluded therefrom and were classified under paragraph 258 as Jacquard figured manufactures of cotton. But the court evidently did not consider this a good reason for giving preference to a provision which describes the goods in general terms over one which describes

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them denominatively. The question is quite different from that presented as to Jacquard figured nettings and laces which are chiefly used for curtains. Such nettings and laces fall within the definition of upholstery goods, and are accordingly dutiable under the provision for "Jacquard figured upholstery goods." See Snow's United States Sample Express Co.'s case, protest 779132, G. A. 7922 (T. D. 36501). In that case the uses to which the goods are devoted determine their classification, but the provision for "Jacquard figured manufactures of cotton" is in no way limited by a definition of the uses to which the goods are to be put. The general clause for Jacquard figured manufactures of cotton is a "catch-all" provision which is broader than the *eo nomine* provision for laces and nettings. Note Carter *v.* United States (6 Ct. Cust. Appls., 253; T. D. 35475).

Following the Wilson case, *supra*, the protest is overruled.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, JUNE 12, 1916.

No. 39870.—Protest 803310 of John G. Saunders (Norfolk).

NIGER OIL—SHEA BUTTER.

McCLELLAND, *General Appraiser:* The merchandise the classification of which is here in dispute is described in the entry as "Niger oil" and "Shea butter." The oil was returned by the appraiser as expressed oil and assessed with duty by the collector at the rate of 15 per cent ad valorem under paragraph 45 of the tariff act of 1913, and the butter was returned as vegetable butter and assessed with duty at the rate of 3½ cents per pound under paragraph 232 of said act. Free entry is claimed for both the oil and the butter either under paragraph 498 or paragraph 561 of said act.

The board and the United States Circuit Court have previously passed upon the issue raised as to the Niger oil. In G. A. 5954 (T. D. 26109) it was held by the board to be subject to duty under paragraph 3 of the tariff act of 1897 as expressed oil, the conclusion of the board being that, while it was commonly used in the United States for soap making, it was, nevertheless, fit for other uses. Paragraph 568 of the act of 1897, under which free entry was claimed in that case, provided for grease and oils "fit only" for soap making. Nevertheless, upon appeal the decision of the board was reversed in Colby *v.* United States (T. D. 27498), the court holding that in the condition as imported it was *fit only* for soap making. In a later case, Abstract 37689, the board held that such oil was entitled to free entry under paragraph 498, tariff act of 1913, it being stipulated by the Government that it was an oil commonly used in soap making.

The evidence in the case at bar amply sustains that theory, and since the words "fit only for such uses" were omitted in the revision of 1913 from paragraph 498, the fact that grease or oil is commonly used for soap making entitles it to free entry beyond question.

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It appears from the record that the shea butter is made from the kernel of the : of the shea tree, which grows in northern Nigeria. Its chief uses are for making l grade soap and candles, and, although not imported in large quantities, it apparer has been used in soap making in the United States for a period of 15 years or o

The protest claims for free entry under paragraph 498 as to both the Niger oil a the shea butter are sustained.

BEFORE BOARD 2, JUNE 12, 1916.

No. 39871.—Protests 793971, etc., of Gustav Lundberg (Boston).

BAR IRON.—Round bar iron imported in 10-foot lengths and one-fourth, th eighths and one-half inch in diameter, classified as wire rods at 10 per cent ad valo under paragraph 113, tariff act of 1913, is claimed dutiable as bar iron at 5 per c under paragraph 103.

Opinion by FISCHER, G. A. It was found that this commodity is recognized in trade and commerce as bar iron and not as wire rods. It was held dutiable un paragraph 103, as claimed.

No. 39872.—Protests 780848, etc., of J. W. Coulston & Co. and protests 765105, e of A. Klipstein & Co. et al. (New York).

SALTS OF ANTIMONY.—Merchandise classified under the provision in paragraph 1 tariff act of 1913, for "antimony oxide, salts and compounds of," at 25 per cent valorem, is claimed dutiable as chemical salts at 15 per cent under paragraph 5.

Opinions by FISCHER, G. A. On the authority of United States *v.* Innis (7 Cust. Appls., —; T. D. 36254) and G. A. 7688 (T. D. 35142), the salts of antimony question were held dutiable as chemical salts under paragraph 5, as claimed.

No. 39873.—Protests 800964, etc., of John Morrison et al. (New York).

BEADED TRIMMINGS.—Trimmings and ornaments classified at 60 per cent ad valo under paragraph 358, tariff act of 1913, are claimed dutiable as articles composed chief value of beads or spangles at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Willenborg *v.* United State Ct. Cust. Appls., 209; T. D. 35464) trimmings and ornaments in chief value of be or spangles were held dutiable under paragraph 333, as claimed.

No. 39874.—Protests 792051, etc., of American Express Co. (New York).

BEADED ARTICLES—APPLIQUÉD WEARING APPAREL.—Unmounted robes classi as appliquéd wearing apparel at 60 per cent ad valorem under paragraph 358, ta act of 1913, are claimed dutiable as articles composed in chief value of beads or span at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Willenborg *v.* United State Ct. Cust. Appls., 209; T. D. 35464) the articles were found not to be appliquéd held dutiable under paragraph 333. Protests making the correct claim sustaine

No. 39875.—Protests 770452, etc., of Ignaz Strauss & Co. et al. (New York).

SILK HAND BAGS—EMBROIDERED ARTICLES.—These protests are against the cl fication of hand bags composed in chief value of silk, made in part of ornament appliquéd with beads. at 60 per cent ad valorem under paragraph 358, tariff act of 1

Opinion by HOWELL, G. A. Protests unsupported; overruled.

No. 39876.—Protest 788754 of Wm. A. Brown & Co. (New York).

CHINESE SHOES.—Chinese shoes classified as silk wearing apparel at 50 per ad valorem under paragraph 317, tariff act of 1913, are claimed free of duty as sl in chief value of leather under paragraph 530.

Opinion by HOWELL, G. A. Upon analysis, leather was found to be the compo material of chief value in the shoes in question. They were held entitled to entry under paragraph 530, as claimed.

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BEFORE BOARD 3, JUNE 12, 1916.

No. 39877.—Protest 794596 of L. E. Ransom (New York).

MUSTARD DROSS—WASTE.

WAITE, *General Appraiser:* This case relates to an importation of what is invoiced as 100 bags of white mustard dross. We gather from the evidence that it is the waste or by-product from the manufacture of mustard, the mustard seed being broken and crushed and the inside portion sifted out, leaving this so-called dross, which is the shell or coating of the mustard seed. Its use, so far as the record shows, is to mix with the mustard and spices to produce what is known as wet mustard, the mustard used for domestic and culinary purposes. It is an adulterant, taking the place of cereal products used in its place at times, this, however, being better because having some mustard in it and therefore not detracting so much from the strength of the manufactured commodity. It was assessed for duty as waste under paragraph 384, tariff act of 1913. It is claimed to be free of duty under paragraph 552, which reads as follows:

552. Moss, seaweeds, and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this section.

The same commodity seems to have been passed upon by the board in Abstract 21791 (T. D. 29984), where it was held that the rule of *noscitur a sociis* would exclude this substance from classification under the free-list provision for "moss, seaweeds, and vegetable substances, crude or unmanufactured." In that case it was held to be waste. We think this case should be governed by the decision in that one. We therefore sustain the classification made by the collector, overruling the protest.

No. 39878.—Protests 787583, etc., of A. A. Barbati & Co. et al. (New York).

DRY BEANS IN TINS.—Dry beans in tins classified at 1 cent per pound under paragraph 199, tariff act of 1913, are claimed dutiable at 25 cents per bushel under paragraph 197.

Opinion by WAITE, G. A. On the authority of G. A. 7836 (T. D. 36034) the beans in question were held dutiable under paragraph 197, as claimed.

No. 39879.—Protests 794972, etc., of F. X. Baumert & Co. et al. (New York).

WEIGHT OF CHEESE.—It is claimed here that duty was assessed on a greater weight of cheese in brine than was actually imported.

Opinion by WAITE, G. A. It was held that the weight of cheese as reported by the Government weigher should be accepted as the basis of liquidation. G. A. 7867 (T. D. 36195) followed.

No. 39880.—Protest 791616 of Thos. Meadows & Co. (New York).

DRAWINGS AND PAINTINGS, ORIGINAL.—Drawings and paintings classified as works of art at 15 per cent ad valorem under paragraph 376, tariff act of 1913, are claimed entitled to free entry under paragraph 652 or 655.

Opinion by WAITE, G. A. Certain of the drawings and paintings in question were found to be original and held free of duty under paragraph 652.

BEFORE BOARD 1, JUNE 14, 1916.

No. 39881.—Protests 783737, etc., of H. Bayersdorfer & Co. (Philadelphia).

IMMORTELLES, COLORED.—Colored immortelles classified as ornamental flowers at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable as preserved cut flowers, by similitude, at 25 per cent under paragraph 210.

Opinion by MCCLELLAND, G. A. On the authority of Bayersdorfer *v.* United States (7 Ct. Cust. Appls., —; T. D. 36390) immortelles in bunches were held dutiable under paragraph 210, as claimed.

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No. 39882.—Protest 796147 of D. C. Andrews & Co. (New York).

MOVING-PICTURE FILMS—NEGATIVES—DUPLICATES.

SULLIVAN, *General Appraiser:* The merchandise in this case consists of moving-picture films. They were assessed with duty at 3 cents per linear or running foot under paragraph 380, act of 1913, and are claimed dutiable at 1 cent or 2 cents per linear or running foot under the same paragraph.

The claim in the protest for a discount of 5 per cent on duties by virtue of section 4, paragraph J, subsection 7, need not be considered, inasmuch as it is not supported by evidence.

The portion of paragraph 380 applicable to this merchandise reads as follows:

380. * * * Photographic-film negatives, imported in any form, for use in any way in connection with moving-picture exhibits, or for making or reproducing pictures for such exhibits, exposed but not developed, 2 cents per linear or running foot; if exposed and developed, 3 cents per linear or running foot; photographic-film positives, imported in any form, for use in any way in connection with moving-picture exhibits, including herein all moving, motion, motophotography or cinematography film pictures, prints, positives, or duplicates of every kind and nature, and of whatever substance made, 1 cent per linear or running foot: * * *.

The question at issue is plainly indicated by the following, which was stated by protestants' counsel at the opening of the trial:

Mr. WEMPLE. This is an importation of moving-picture films assessed as negatives and claimed as duplicates.

The testimony shows that the films in question are duplicates, not *photographed* by a camera, but *printed* from a positive by mechanical means—putting one against the other. On cross-examination it was shown that they are moving-picture films; that they are not the original or first negative, nor equal in quality thereto.

This in substance is the material portion of the testimony of two witnesses, which was not contradicted by the Government, nor shaken on cross-examination.

The last clause of paragraph 380, providing for "all moving * * * film pictures, *prints*, * * * or *duplicates of every kind and nature*" is more clearly applicable to this merchandise than the provision in the same paragraph for "*photographic*-film negatives, imported in any form, for use in any way in connection with moving-picture exhibits, * * * exposed and developed, 3 cents per linear or running foot" and we so hold.

We find the merchandise dutiable at 1 cent per linear or running foot under paragraph 380, sustain the protest to this extent, and reverse the decision of the collector.

No. 39883.—Protest 772573 of Pierson Schade Forwarding Co. (St. Louis).

MUSICAL INSTRUMENT PARTS—OLD ORGAN—JUNK.

SULLIVAN, *General Appraiser:* The merchandise consists of an old organ purchased in Canada. It was about 75 years old, and had been discarded and thrown into a shed, where it remained for three years. It was taken by the importers at a valuation of $150 as part payment for another organ sold by them to the owner of the old organ. It was brought to this country, and an affidavit filed by the importers that it was of the manufacture of the United States, was truly exported and imported without having been advanced in value or improved in condition by a process of manufacture or other means; and that no bounty, drawback, or allowance had been paid or admitted thereon. No further reference was made to this claim, or attempt made to claim free entry by reason of the merchandise being manufactured in the United States and reimported. As shown by the railway invoice it was valued at $75, and described as "19 boxes, parts of pipe organ (second hand), $75." The packing was valued at $20.

The collector classified it as parts of musical instruments, and assessed duty thereon at 35 per cent ad valorem under paragraph 373 of the tariff act of 1913. It is claimed in the protest as being entitled to free entry under paragraph 522 of the same act as old junk. The evidence discloses that no part of this merchandise was used as parts of musical instruments, except possibly the stops, and, in some cases, other parts in

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repairing old organs; but that the material so used had to be remanufactured. The pipes were melted up for the metal, which was used. The case was cut up into veneer lumber being old and dry. The keyboard, which the witness stated was refuse junk, was not used, being old ivory worn through.

The paragraph under which the merchandise was classified has reference entirely to musical instruments or parts thereof, instruments used in connection therewith, and metal musical instrument strings. Was this a musical instrument or part thereof? We think not. Does "musical instrument" mean an instrument that can be used, and that will produce some music? Does "parts of musical instruments" mean such as can be used in the condition as imported? In our opinion in each instance it does. The merchandise does not seem to us to be a musical instrument as we understand that term, nor parts thereof. We are without any testimony whatever that it could be used as such. On the contrary the evidence sustains the protestants' contention that it could not be used.

We hold it is neither a musical instrument, nor a part thereof, and reverse the collector's action.

The protest is sustained.

No. 39884.—Protest 790664 of General Optical Co. (New York).

Rock Crystal.—Merchandise invoiced as "quartz prisms," consisting of rock crystal cut and ground into shape, classified as articles composed wholly or in chief value of rock crystal at 45 per cent ad valorem under paragraph 98, tariff act of 1913, is claimed dutiable as articles composed of mineral substances under paragraph 81.

Opinion by Sullivan, G. A. The merchandise was found to be rock crystal advanced from the original state, not rough cut or unwrought, which after importation is fitted for its use in an optical instrument by cementing two pieces together and polishing and beveling the faces. It was held properly classified as articles composed of rock crystal under paragraph 98.

No. 39885.—Protests 787815, etc., of J. A. Chambers (New York).

Ultramarine Blue—Wash Blue.—Laundry blue classified at 20 per cent ad valorem under paragraph 17, tariff act of 1913, as a chemical compound, is claimed dutiable at 15 per cent under paragraph 52 as wash blue containing ultramarine, under paragraph 21 as a coal-tar product, or under paragraph 385 as a nonenumerated manufactured article.

Opinion by Brown, G. A. On the authority of Abstract 38840 merchandise found to be wash blue containing ultramarine with a slight addition of soda was held dutiable under paragraph 52, as claimed. It was found from the chemist's report that certain of the merchandise consists of wash blue not containing ultramarine, but that it is a preparation of bicarbonate of soda and coal-tar dye. Paragraph 21 was held inapplicable, as the relative proportions of the constituents do not appear in the record. On the authority of G. A. 7896 (T. D. 36361) this merchandise was held dutiable under paragraph 385.

No. 39886.—Protests 761582, etc., of R. H. Macy & Co. (New York).

Axminster Carpet—Rugs.—The appraiser reports that the merchandise consists of "one-piece seamless rugs made on the Axminster carpet loom." It was classified as Axminster rugs at 50 per cent ad valorem under paragraph 300, tariff act of 1913, and is claimed dutiable as Wilton carpet or carpeting at 30 per cent under paragraph 294.

Opinion by Brown, G. A. It was found that the merchandise in question is made on a Jacquard loom and is Wilton and not Axminster. It was held dutiable under paragraph 294, as claimed.

No. 39887.—Protests 746111, etc., of Embossing Co. et al. (New York).

Plastilina—Modeling Clay.—Plastilina classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 385 as a nonenumerated manufactured article.

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Opinion by BROWN, G. A. On the authority of G. A. 7896 (T. D. 36361) plastilina was held dutiable under paragraph 385, as claimed.

No. 39888.—Protests 745716, etc., of F. B. Vandegrift & Co. (Philadelphia).

IMITATION ASTRAKHAN—PILE FABRICS.—The appraiser reports the merchandise in question to be wool astrakhan. It was classified as wool pile fabrics at 40 per cent ad valorem under paragraph 288, tariff act of 1913, and is claimed dutiable as wool cloth at 35 per cent under the same paragraph.

Opinion by BROWN, G. A. The imitation astrakhan in question was held properly classified at 40 per cent under paragraph 288. Knauth *v.* United States (6 Ct. Cust. Appls., 128; T. D. 35389).

BEFORE BOARD 3, JUNE 14, 1916.

No. 39889.—Protests 746922, etc., of E. Stegemann, jr., et al. (New York).

CARBONS.—Carbons classified at 30 per cent ad valorem under paragraph 82, tariff act of 1913, are claimed dutiable at 40 cents per hundred feet under the same paragraph.

Opinion by HAY, G. A. On the authority of Hirschberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36307), certain of the merchandise was held dutiable at 40 cents per hundred feet under paragraph 82, as claimed.

No. 39890.—Protests 739655, etc., of Frank P. Dow Co. et al. (Seattle).

ORANGE BOXES—PACKAGES.—These protests relate to two or more boxes containing oranges, fastened together with grass cord or rope. Duty was assessed according to the capacity of the individual boxes under paragraph 220, tariff act of 1913. It is claimed that each package of oranges is two or more boxes fastened together.

Opinion by HAY, G. A. On the authority of Bush *v.* United States (6 Ct. Cust. Appls., 401; T. D. 35974) the protests were sustained and the collector directed to assess duty according to the capacity of the packages.

No. 39891.—Protests 737058, etc., of E. H. Van Ingen & Co. et al. (New York).

SHRINKAGE.—These protests relate to the cost of shrinkage of certain woolen goods.

Opinion by HAY, G. A. United States *v.* Van Ingen (5 Ct. Cust. Appls., 432; T. D. 34970) followed as to shrinkage. Protests sustained.

No. 39892.—Protests 785622-57369, etc., of Wakem & McLaughlin et al. (Chicago, etc.), and protest 794257 of Goldberg, Bowen & Co. (San Francisco).

TEA CONTAINERS.—Containers of tea are claimed free of duty under paragraph 627, tariff act of 1913.

Opinions by HAY, G. A. Abstract 39651 followed as to protest fee. Protests claiming "containers are free of duty" and in substantiation thereof citing T. D. 34976, held sufficient. On the authority of Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) the tea containers not made of glass, bamboo, or fiber were held entitled to free entry.

REHEARINGS GRANTED.

JUNE 5, 1916.

No. 39893.—ROOFING SLATE.—Protests 786763, etc., of M. J. Hogan. Abstract 39603.

No. 39894.—TIMERS.—Protest 797376 of Jules Racine & Co. Abstract 39592.

JUNE 16, 1916.

No. 39895.—STRINGS FOR MUSICAL INSTRUMENTS.—Protests 751408, etc., of Lyon & Healy. Abstract 39737.

No. 39896.—ALUMINUM.—Protest 800702 of Sears, Roebuck & Co. Decided June 7, 1916. Not published.

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(T. D. 36503.)

Bamboo-chip hats.

ISLER & GUYE *v.* UNITED STATES (No. 1511).

1. UNFINISHED BAMBOO-CHIP HATS, HOW DUTIABLE.

Unblocked and untrimmed hats made of thin, narrow shavings of bamboo are dutiable as "hats * * * of * * * chip, * * * not blocked or trimmed" under paragraph 335, tariff act of 1913, and not as manufactures of wood under paragraph 176.

2. FIVE PER CENT DISCOUNT TO GOODS IMPORTED IN DUTCH VESSELS.

Goods imported in vessels belonging to Holland or the Netherlands are entitled to the 5 per cent discount under section 4, paragraph J, subsection 7, tariff act of 1913.

United States Court of Customs Appeals, June 5, 1916.

APPEAL from Board of United States General Appraisers, Abstract 37056 (T. D. 35000).

[Modified.]

Walden & Webster (*Henry J. Webster* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument May 4, 1915, by Mr. Webster and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This merchandise consists of men's hats composed of thin, narrow shavings of bamboo not trimmed or blocked. They were assessed for duty by the collector of customs at the port of New York as hats wholly or in chief value of chip, not blocked or trimmed, under the pertinent part of paragraph 335 of the tariff act of 1913, which reads:

335. * * * Hats, bonnets, and hoods composed wholly or in chief value of straw, chip, grass, palm leaf, willow, osier, rattan, cuba bark, or manila hemp, whether wholly or partly manufactured, but not blocked or trimmed, 25 per centum ad valorem; * * *.

Protestants claim that they are properly dutiable as manufactures of wood under the provisions of paragraph 176 of that act. They further claim a 5 per cent discount under the provisions of section 4, paragraph J, subsection 7 of the act. The Board of General Appraisers overruled the protest in all particulars, and the importers appeal.

In Tuska *v.* United States (1 Ct. Cust. Appls., 531; T. D. 31547), we held that bamboo of the same character as the material going to compose the hats here in question fell within the designation of chip. On the trial of this case before the board, the importers' counsel admitted that the material of which the hats in question is composed is chip, within the ordinary meaning of the word and within the definition which has been adopted by this court, but they sought to show that the term had a different commercial meaning in the trade. We do not decide whether the ordinary use of the word "chip" can

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be varied by proof of commercial usage, but it is altogether clear that without regard to the term applied to the product of an article as a hat, bonnet, or hood, whether they be called chip hats, or bamboo hats, or Java hats, or what not, if in fact they are composed wholly or in chief value of chip, they would of necessity fall within the terms of this paragraph. The burden of showing that the word "chip" itself has acquired a commercial designation which excludes therefrom bamboo chip was undertaken by the importers' counsel. But we think he wholly failed to establish this. A number of witnesses were called who testified that chip hats as they understood the term in the trade included hats only which were made of chip of other woods than bamboo, and that hats made of chip bamboo were called either bamboo hats or Java hats. This falls far short of showing that bamboo chip, if introduced as a separate article of commerce, would bear a designation other than that employed in common usage. In the Tuska case it was held that bamboo was wood and that the shavings or chips of wood fell within the designation of chips.

One of the witnesses for the importers in this case testified that chip is shavings of wood, and answered the question, "This Exhibit 1 is made up of wood shavings, isn't it?" by saying, "I don't know if you call bamboo wood."

This was followed:

Q. Assuming for the sake of argument that bamboo is wood, then Exhibit 1 is made up of chip from that wood, isn't it?—A. I should say so; yes, sir.

Now it so happens that for reasons of their own dealers in chip bamboo see fit to designate the product when in the form of a hat, or possibly in the form of a basket, as a bamboo hat or a bamboo basket, respectively. But this does not necessarily mean that the material of which the article is composed if introduced by itself would bear any other name than that which common usage attributes to it. In the point of establishing that the material itself of which the bamboo is composed is excluded by commercial testimony from the term "chip," the testimony is not convincing. True, one witness testifies that he is a dealer in chip, among other things, and further testifies as follows:

Q. Has the term chip during your experience had a distinct and definite meaning in the trade which everybody understands?—A. Understood as chip.

Q. Will you state whether that understanding of the term chip included bamboo, split or otherwise?—A. No, did not; entirely different article.

Q. Have you a sample here of the chip you deal in?—A. Yes.

Q. Does this sample represent the article generally known as chip?—A. Represents the article *known in our business* as chip.

He also testified that the bamboo basket is not known or dealt in as a chip basket. This testimony goes little further than to show that this witness handles only chip made of other woods than bamboo.

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Possibly for the reason that bamboo would bear a higher price, the products of bamboo chip are usually designated by that name. But we think that there was a failure to show a commercial designation which attributes to this term any other than its ordinary meaning. The protests will therefore be overruled as to the claim for another classification than that given by the collector.

As to the question of the 5 per cent discount under section 4, paragraph J, subsection 7, of the act of 1913, the importers' case we think was made out by testimony of the witness Krusser that the shipments were made in vessels belonging to Holland or the Netherlands. The treaties of those nations provide that the vessels of those nations are entitled to enter their goods on the same terms as those imported in American bottoms, and following our former decisions we hold that this discount should have been allowed.

As to this point the decision of the board is reversed; as to the classification, affirmed.

Modified.

DE VRIES, Judge, dissents on the point last discussed.

(T. D. 36504.)

Razor blades.

UNITED STATES *v.* WITTE CUTLERY CO. (No. 1694).

1. CONSTRUCTION—PARAGRAPH 128, TARIFF ACT OF 1913.

The proviso to paragraph 128, tariff act of 1913 ("that blades, handles, or other parts of any of the foregoing knives, razors, or erasers shall be dutiable at not less than the rate imposed upon the knives, razors, and erasers of which they are parts") does not mean that parts, to be included in the proviso, must be imported with the other parts of the article. The expressions "foregoing knives, razors, or erasers" and "of which they are parts" refer to knives, razors, or erasers generically, and not to the particular ones which might be entered under the paragraph.

2. RAZOR BLADES, HOW DUTIABLE.

Razor blades, designed to become parts of razors valued at more than $1 per dozen, are dutiable at 55 per cent ad valorem, under paragraph 128, tariff act of 1913, and not as metal articles under paragraph 167.

United States Court of Customs Appeals, June 6, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39313.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney, of counsel), for the United States.

Jules Chopak, jr., for appellee.

[Oral argument May 16, 1916, by Mr. Hanson and Mr. Chopak.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

Razor blades imported at the port of New York were classified by the collector of customs under the first proviso to paragraph 128 of

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the tariff act of 1913 and assessed for duty at 55 per cent ad valorem. Paragraph 128, in so far as it is pertinent to the case, reads as follows:

128. Penknives, pocketknives, * * * erasers, * * * and razors, all the foregoing, whether assembled but not fully finished or finished; valued at not more than $1 per dozen, 35 per centum ad valorem; valued at more than $1 per dozen, 55 per centum ad valorem: *Provided*, That blades, handles, or other parts of any of the foregoing knives, razors, or erasers shall be dutiable at not less than the rate herein imposed upon the knives, razors, and erasers of which they are parts. * * *

The importers protested that the proviso covers only the blades, handles, or other parts of such razors as are imported unassembled, and relied on the claim that the goods were articles of metal, dutiable at either 20 per cent or 50 per cent ad valorem under the provisions of paragraph 167 of the tariff act of 1913, which paragraph reads as follows:

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

The evidence in the case establishes that the razor blades in controversy were imported into the country to be made up into razors ready for use by riveting them to handles and then honing and setting them. The handles and rivets used are of domestic manufacture.

The board found as a fact that the razor blades in question were not imported with the handles of the razors of which the blades were destined to be a part, and virtually held as a matter of law that the first proviso to paragraph 128 was applicable only to blades imported with the handles and other parts destined to be fitted to such blades in order to constitute razors. The protest was therefore sustained by the board, and the Government appealed.

The decision of the board in this case and the contention of the importer finally reduce themselves to the single proposition that the proviso to paragraph 128 covers parts of unassembled razors and is not applicable to any of such parts unless they be imported with the complementary parts necessary to constitute the entireties known as razors.

We find nothing in the proviso which warrants the limitation put upon its operation by the board and contended for by the importers. The blades, handles, and other parts provided for are the blades, handles, and other parts of razors, and not the blades, handles, and other parts of assembled or unassembled razors. When it comes to imposing the rate of duty, however, it is true that the Congress does declare that blades, handles, and other parts of razors should bear a rate of duty not less than that imposed upon the razors "of which

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they are parts." The phrase, however, "of which they are parts" does not necessarily imply that the blades, handles, etc., must be actual parts of assembled razors or unassembled razors rather than of razors of which they are destined to become parts.

Technically the language of the proviso "blades, handles, or other parts of any of the *foregoing* knives, razors," etc., would mean the parts of razors already assembled. But obviously this is not the sense in which the reference to "any of the foregoing knives, razors," etc., was employed. The reference to "any of the foregoing knives, razors," etc., is to be held to be a reference to these terms generically, and refers to razors, knives, etc., of the class described in the enacting portion of the paragraph. This is essential in order to give force and effect to the proviso, and in this sense would include parts, though parts of unassembled razors.

Precisely the same consideration should influence us to a conclusion that the reference by the terms "of which they are parts" is to be treated in the same manner. This statement is for the purpose of fixing the dutiable value of the razors. These knives, blades, handles, etc., are parts of a class of razors valued at not more than $1 per dozen or at more than $1 per dozen. Now, for the purpose of defining the rate of duty a somewhat clumsy statement is employed that "they shall be dutiable at not less than the rate herein imposed upon the knives, razors, and erasers * * * of which they are parts," and the words "of which they are parts" refer back to the two classes of razors, one valued at $1 per dozen and the other valued at more than $1 per dozen. There is no indication to our minds that this proviso was intended to provide for unassembled razors; but it provides for parts of razors not yet assembled. Having so provided, the further purpose is evident by the proviso to fix a duty at a rate not less than that which by the previous terms of the paragraph had been imposed upon razors, and as two rates of duty were imposed upon different grades of razors it was necessary to distinguish them, and this distinction is made by providing that they should pay no less rate of duty than would the razors of which they are parts—that is, of which they were designed for and suitable to become parts of—would pay.

In the present case the value of the razor blades is admitted to be $2, and from this it is very clear that the razors for which they will form a part will be worth more than $1 per dozen.

The decision of the Board of General Appraisers is *reversed*.

DISSENTING OPINION.

SMITH, Judge:

I regret to say that I can not agree with the majority opinion as to the construction which should be placed on paragraph 128, and particularly on the first proviso thereof.

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lows:

128. Penknives, pocketknives, * * * erasers, * * * and razors, all the foregoing, whether assembled but not fully finished or finished; valued at not more than $1 per dozen, 35 per centum ad valorem; valued at more than $1 per dozen, 55 per centum ad valorem: *Provided*, That blades, handles, or other parts of any of the foregoing knives, razors, or erasers shall be dutiable at not less than the rate herein imposed upon the knives, razors, and erasers of which they are parts. * * *

In determining the interpretation to be put upon the provision cited, it is important to note that the enacting clause did not provide for razors and other articles whether finished or unfinished. Had it done so, the enacting clause would have covered both assembled razors and unassembled razors. United States *v.* Auto Import Co. (168 Fed., 242); Park & Tilford *v.* United States (1 Ct. Cust. Appls., 34, 35; T. D. 31006); Isaacs *v.* Jonas (148 U. S., 648). The fact that Congress did not so provide, but preferred to insert the limiting words "whether assembled," would seem to indicate a legislative intention to confine the enacting clause to assembled razors, and that conclusion is fortified by the language which Congress saw fit to use. The phrase "razors, * * * whether assembled but not fully finished or finished," as it stands, and without implying or adding other words, signifies razors if assembled, finished or unfinished, because the word "whether" may be employed as the equivalent of "if" or "in case." (See "Whether," Standard Dictionary.) Sometimes in using the word "whether" the correlative "or" or "or whether" is implied, but in the phrase under consideration the "or" is present, and if "or whether" or "whether" be implied it results in the same construction; that is to say, the phrase as implied would read, "razors, * * * whether assembled but not fully finished or *assembled* finished," or it would read, "razors, * * * whether assembled but not fully finished or *whether assembled* finished." It is true that sometimes an alternative is introduced by "whether" and an alternative in the negative is implied. Here, however, the phrase in question conveys the meaning which attaches to the words just as they stand, and there is absolutely nothing in the context which warrants the conclusion that the words "or not assembled" must be implied to make sense. Indeed, that the words "or not assembled" can not be implied becomes fairly evident when it is considered that unassembled razors, finished, would be an anomaly. I think, therefore, that unassembled razors are excluded from the enacting clause, and that they were so excluded because it was the intention to cover them by the language of the proviso.

The words in the proviso "foregoing knives, razors, or erasers" can not be held to mean assembled knives, razors, or erasers, for the reason that the proviso would then become mere surplusage, in

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view of the fact that parts of assembled razors are dutiable under the enacting clause, not as parts, but as assembled razors. The same result would follow even if the enacting clause could be construed to embrace unassembled razors, because parts of unassembled razors would then be provided for in that clause as unassembled razors. The words "all the foregoing" must therefore be held to relate to knives, razors, and erasers, and not to assembled knives, razors, or erasers.

The next question to be determined is, What is the scope of the proviso? Is it confined to those articles which at the time of importation are actually parts of razors, or is it broad enough to include things which at the time of importation are not parts of razors, but are razor parts intended to be made up into razors in this country by uniting them to complementary parts of domestic manufacture? I incline to the former interpretation, for the reason that the proviso requires that the parts of razors provided for shall bear the rate of duty imposed upon the knives and razors *of which they are parts.*

The razor blades in controversy were imported, as shown by the evidence, to be made up into razors in this country by adding to them domestic materials, and consequently they could not be considered parts of any razor at the time it became the duty of the collector to classify and assess them for duty. Under the actual terms of the proviso the duty to be assessed on parts of razors is that imposed on the razors *of which they are parts*, and as at the time of importation of the merchandise there were no razors of which the blades were parts it follows that the goods are not dutiable under the proviso. If it were held that the value of the razor after manufacture in this country should be taken as the basis of duty, it would result that duty would be assessed on the valuation of a domestic razor and not on the valuation which the statute very explicitly imports. Of course, if the phrase "razors * * * of which they are parts" could be construed as if it read "of the class of razors of which they are to be parts" the proviso might be held applicable to the goods in controversy, but where is the justification for concluding that Congress intended that the phrase should be so read? I find none either in the paragraph itself or in its legislative history, and to so construe the proviso as to make it applicable to the importation would, in my opinion, simply amount to judicial legislation. It may be that in drafting the proviso there was a legislative lapse, but there is nothing tangible which would justify us in reaching that conclusion. Indeed, for aught we know, it may be that Congress intended to favor the importation of parts of razors designed to be manufactured into razors by the addition of American materials.

I do not believe that the proviso is confined to parts of razors which are imported with their complements in the same shipment, as de-

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cided by the board. Indeed, I am of opinion that the language of the proviso is broad enough to cover parts of razors whether the complementary parts come in the same or in a different shipment. Had Congress provided in terms for unassembled razors or for parts of unassembled razors there might be some excuse for holding that such a provision required the contemporaneous importation of the several parts which were committed one to the other for the manufacture of a particular class of razors. See United States *v.* Schoverling (146 U. S., 76); Isaacs *v.* Jonas, *supra.* But Congress did not so provide, and I can find no reason for limiting the proviso to such parts of razors as are imported at the same time with their complements.

It is my opinion, therefore, that the decision of the Board of General Appraisers should be affirmed.

(T. D. 36505.)

Phonograph master records.

AUSTIN, BALDWIN & CO. *v.* UNITED STATES (NO. 1600).

1. "COST OF PRODUCTION"—PHONOGRAPH RECORDS.

The compensation paid to talent for the production of phonograph records is an element in the "cost of production" of such records under paragraph L of section 3, tariff act of 1913.

2. CONSTRUCTION—PARAGRAPH L, SECTION 3, TARIFF ACT OF 1913.

The provision in paragraph L of section 3, tariff act of 1913, "all general expenses to be estimated at not less than 10 per centum," does not authorize appraising officers to fix general expenses at any sum greater than 10 per cent of the total expenses which to them may seem proper and without regard to the actual general expenses.

3. "COST OF MATERIALS AND OF FABRICATION"—"GENERAL EXPENSES"—PARAGRAPH L OF SECTION 3, TARIFF ACT OF 1913.

Money expended in the production of phonograph records for "locating room, moving and hire of piano, wages of boy at laboratory, and rent of laboratory, furniture, and curtains" is not a part of the "costs of materials and of fabrication," but within the category of "general expenses" under paragraph L of section 3, tariff act of 1913.

United States Court of Customs Appeals, April 10, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7756 (T. D. 35593).

[Reversed.]

Comstock & Washburn for appellants.

Bert Hanson, Assistant Attorney General (*Leland N. Wood* and *John J. Mulvaney*, special attorneys, of counsel), for the United States.

[Oral argument December 10, 1915, by Mr. Washburn and Mr. Hanson.]

Before SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

This case involves the question of whether the appraising officers proceeded upon a wrong principle in determining the appraised value

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of 127 wax disks manufactured in the United States and shipped as blanks to Barranquilla, Colombia, in South America, from which place they were subsequently imported into the United States at the port of Philadelphia bearing the record of vibrations produced thereon in Colombia either by the human voice or musical instruments. The importers entered the 127 disks at a value of $3 per disk, or a total of $381.

In the form in which they were imported the disks were intended to be used as models for the production on copper disks of relief or cameo representations of the vibrations recorded in wax. A copper disk upon which such relief or cameo representations of sound vibrations have been imposed is known as a master matrix, and from it may be made, by electrotyping or other process, large numbers of other disks having intaglio reproductions of the vibrations recorded in relief on the copper disk and conforming substantially to those originally inscribed on the wax disk.

It appears from the record on reappraisement and the agreed statement of facts that the cost of producing the blank wax disks was 25 cents each; that a representative of the Victor Talking Machine Co. took the blank disks from Camden, N. J., to Barranquilla, Colombia, and thence proceeded inland, where he caused to be impressed on the disks a record of the vibrations which the disks bore when imported; that after the vibrations were recorded the representative of the company returned with the disks to Camden, N. J., via Barranquilla; that the representative of the company expended for the journey from Camden, N. J., to Barranquilla, Colombia, and return, $555.23; that his trip inland, return to Barranquilla, and stay inland, required the expenditure of $882.45, of which sum $146.55 was incurred to secure quarters, furniture, and services directly necessary for and connected with the production of the wax records; that the salary of the representative during the time he was inland making the wax records amounted to $95.86; that the sum of $1,486 was paid to the talent employed for the purpose of producing the special sound vibrations required by the company and recorded on the disks.

The appraising officers appraised the importation on the basis of the cost of production, which is required to be ascertained in the manner provided for in that part of paragraph L of section 3 of the tariff act of 1913, reading as follows:

L. That when the actual market value, as defined by law, of any article of imported merchandise, wholly or partly manufactured and subject to an ad valorem duty, or to a duty based in whole or in part on value, can not be ascertained to the satisfaction of the appraising officer, such officer shall use all available means in his power to ascertain the cost of production of such merchandise at the time of exportation to the United States, and at the place of manufacture, such cost of production to include the cost of materials and of fabrication, and all general expenses to be estimated at

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merchandise ready for shipment, and an addition of not less than 8 nor more than 50 per centum upon the total cost as thus ascertained; and in no case shall such merchandise be appraised upon original appraisal or reappraisement at less than the total cost of production as thus ascertained. * * *

The record discloses that the local appraiser determined the appraised value of the disks by adding together the cost of their manufacture as blanks, the compensation paid to talent, 10 per cent for general expenses, and 8 per cent for profit. The importers were not satisfied with the value fixed by the local appraiser, and accordingly they demanded a reappraisement, which was made in due course by General Appraiser McClelland, who sustained the entered value. From the action of the general appraiser the collector appealed to a board of three general appraisers sitting as a board of reappraisement. The reappraisement board found that the actual cost of producing the wax records was as follows: One hundred and twenty-seven blank disks, at 25 cents each, $31.75; compensation of talent for the production of the vibrations recorded on the 127 disks, $1,486; salary of the representative of the Victor Talking Machine Co. while superintending the making of the wax records, $95.88; other expenses incurred for service, furniture, piano, and laboratory, $146.55. The sum of those items was $1,760.18, to which the board added 20 per cent thereof, or $352.03, for general expenses, and 8 per cent thereof, or $140.81, for profit, and thus secured a grand total of $2,253.02, from which $1,486, the total of the several sums paid as compensation to different artists, was subtracted in order to arrive at the sum chargeable equally to all the disks. The board found that the sum so chargeable was $767.02, and that $6.06 represented the cost of producing each disk, exclusive of the compensation paid to talent. To this $6.06 was added the cost of talent employed for the making of each disk, and the sum so obtained was considered by the board to be the total cost of production and therefore the value at which the disk should be appraised under that part of paragraph L to which we have already referred. The goods were assessed by the collector on the value thus fixed, and the importers protested that the assessment was incorrect, upon the ground that the reappraisement board proceeded upon a wrong principle and contrary to law in appraising the importation. The general appraisers, sitting as a classification board, overruled the protest, and from that decision the importers have prosecuted this appeal.

As the appraisement in controversy was made under that part of paragraph L which prescribes the method of appraising imported merchandise when the actual market value thereof can not be determined to the satisfaction of appraising officers, it was incumbent on such officers to ascertain the cost of production *at the place*

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of manufacture and at the time of exportation to the United States. By the terms of the paragraph the cost of production includes the cost of materials and of fabrication, general expenses to be estimated at not less than 10 per cent on every outlay incident to the production of the goods at the time and place specified in the paragraph, the expense of preparing and putting up the merchandise ready for shipment, and an addition of not less than 8 nor more than 50 per cent of the total cost as thus ascertained.

The question in the case is, Did the appraising officers include in the cost of production items not contemplated by the statute and thereby fix the cost of production, and consequently the appraised value, at a greater sum than the law warranted?

The importers contend, first, that the compensation paid to talent can not be considered either as a cost of material or a cost of fabrication, and that therefore such compensation should not have been considered as an element in determining the appraised value of the disks; second, that in ascertaining the cost of production the board added to the cost of material and fabrication not only the actual general expenses, but also 20 per cent of the total outlay as estimated general expenses, thereby taking account twice of general expenses, and calculating the estimate of general expenses at twice the percentage provided for by the statute. Whether "cost of materials and of fabrication" should be given a meaning which will confine it to the expense incurred for the actual physical constituents of the article and for the processing of such constituents only, or should be accorded an interpretation broad enough to include the expense of all materials necessarily consumed and all processes necessarily employed in the manufacture of the goods, we are not prepared to say at this time. In our opinion, that issue has been taken out of the case by reason of the fact that no cost of materials or of fabrication is here involved other than that of cost of component materials or of processes or agencies applied to such materials in order to complete the records in wax. It is admitted that the cost of materials and of fabricating the blank wax disks was 25 cents each, and from that it results that there can be no controversy as to the cost of materials found in the importation, inasmuch as it clearly appears that the materials of the blank disks are identical with those of the completed wax records.

The first contention of the importers is based upon the assumption that the provision in paragraph L for "the cost of materials and of fabrication" was intended to cover only those expenses which have some direct physical or mechanical relation to the production of the article manufactured, and upon the further assumption that vibrations, whether produced by the human voice or by musical instruments, have no physical intervention in the making of the

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wax records and can not properly be regarded as tangible factors in their fabrication.

Whatever might be said of the first assumption, it is certain that the second is at variance with the facts and must be rejected. The vibrations produced by the human voice or by musical instruments act directly and *physically* on the recording machine, and by agitating a membrane or thin plate give to the needle attached thereto the motions which enable it to cut into the rotating wax disk a continuous groove marked by alternate elevations and depressions. An instrumentality accomplishing such results as that is just as much a physical force as is the power which rotates the disk, and the cutting of an undulating line in wax by a vibratory force or power must be regarded as a processing of material just as much as if the same result had been achieved by hand or the operation of some delicate mechanism. To secure the vibrations required to produce a particular and special kind of cut in the wax disk necessitated the expenditure of a definite sum of money, and that definite sum of money represents the cost of the force applied, and therefore must be regarded as a proper cost of fabrication.

The Government insists that the importers' second contention can not be sustained, first, because appraising officers were given by paragraph L the discretion to estimate general expenses at any amount not less than 10 per cent of the total cost of production and were therefore authorized to fix such general expenses at 20 per cent of the total cost or even at a larger sum should their judgment so determine; second, because the expenses ($146.55) incurred for carriage for locating room, for tuning piano, moving piano, hire of boy at laboratory, rental of piano and of laboratory, furniture, and curtains, were in fact costs of fabrication and not general expenses, and were therefore properly included in the cost of production in addition to the estimate of 20 per cent made by appraising officers for general expenses.

The phrase "general expenses to be estimated at not less than 10 per centum, covering each and every outlay of whatsoever nature incident to such production," may be susceptible of the construction put upon it by the Government, but certainly it is also open to the interpretation that it establishes a minimum for general expenses and that the ascertained actual general expenses must be accepted by the appraising officers in calculating the cost of production unless such expenses fall below 10 per cent of the total cost, in which event they must be raised to the minimum. Of the two interpretations we incline to the latter, because we are loath to believe that it was the purpose of Congress to confer upon appraising officers so wide a discretion as that contended for, and because we think the history of the legislation fairly warrants the conclusion that Congress in-

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tended that the actual general expenses should be considered as a factor in arriving at the cost of production unless they fell below 10 per cent of the total cost.

Section 11 of the act of June 10, 1890, provided that appraising officers should include as an item of the cost of production "all general expenses covering each and every outlay of whatsoever nature incident to such production." That particular part of section 11 was reenacted word for word by section 32 of the act of 1897, and was modified by the acts of 1909 and 1913 only to the extent that subsection 11 of section 28 of the former and paragraph L of section 3 of the latter required the inclusion in the cost of production of all general expenses "to be estimated at not less than 10 per centum, covering each and every outlay of whatsoever nature incident to such production." Just why the modification was made does not affirmatively appear from the reports of the congressional committees which had under consideration the administrative provisions of the tariff acts last named. We do know, however, from the documents submitted to the Committee on Ways and Means, that the Board of General Appraisers having been invited to comment on proposed changes to the administrative act of 1909, in speaking of this precise modification, called attention to the fact that almost without exception the general expense item in cost statements was inadequate. Referring to the item of general expense, the board said:

> No such item can be fairly computed at less than 10 per cent, and the exceeding difficulty of correctly ascertaining the same on this side makes advisable a minimum fixed by law.

Apart from all that, however, we think it is apparent that the change would not have been made unless the Congress had reason to believe that general expenses might be understated and that in consequence appraising officers, who were dependent in a large measure upon the accuracy of importers' statements for the correctness of appraisements, might be led to undervalue goods the actual market value of which in the country from which exported could not be ascertained. With an existent or apprehended evil of that kind in mind, the natural thing for Congress to do was to fix a minimum for general expenses which would afford to the revenues a reasonable measure of protection. That minimum, in our opinion, was fixed at 10 per cent of the total outlay, and it is fair to assume that that percentage was not a random estimate, but was based upon what seemed to be the general experience of the commercial world. From the fact that appraising officers are required by the paragraph in question to include general expenses *estimated at not less than 10 per cent of the total cost*, it can not safely be reasoned out that Congress intended to confer on appraising officers the discretion to ignore entirely the true actual general expenses and to fix them arbitrarily at any amount

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had no such purpose as that we think is evidenced by the fact that the importers were required by paragraph J to make return of the cost of production, including therein the elements of cost mentioned in paragraph L, and paragraph L, which makes the cost of production the measure of value, not only directs the appraising officer to ascertain such cost *by all available means in his power*, but takes special care to enumerate the several elements which must be considered by him in calculating it. We are decidedly of the opinion that paragraph L establishes a rule of appraisement designed to reasonably protect the Government from undervaluation and the importer from overvaluation, and that it was not the purpose of Congress to permit the appraising officer to fix values regardless of the facts. In other words, in figuring out the cost of production, the appraising officer must take into account the cost of fabrication, the cost of materials, and the general expenses in the amount which, using every available means in his power, he finds them actually to be, provided, however, that general expenses can in no event be calculated at less than 10 per cent of the total outlay.

The sum of $146.55 paid for locating room, moving and hire of piano, wages of boy at laboratory, and rent of laboratory, furniture, and curtains can not, we think, be regarded as costs of materials and of fabrication. The items mentioned were not chargeable to any one disk, but to the entire output, and consequently they properly fall within the category of general expenses. The reappraisement board included in the cost of production not only the expenditure made for the items just mentioned, but also 20 per cent of the total outlay as an estimate of general expenses. That method of calculating the cost of production can not, we think, be justified even under the construction put upon paragraph L by the Government, inasmuch as it necessarily implies that both an estimate of general expenses and actual general expenses as they are truly found to be must be considered as factors in the cost of production.

We are of opinion that as the ascertained general expenses exceeded 10 per cent of the total outlay, the board proceeded upon a wrong principle when it included in the cost of production not only the actual general expenses but also 20 per cent of the entire expenditure incident to such production. The decision of the Board of General Appraisers sustaining the reappraisement of the board of reappraisement is therefore *reversed*.

ON HEARING OF APPLICATION FOR FORM OF JUDGMENT AND MANDATE.

SMITH, Judge:

On the appeal taken in this case the decision of the board was reversed by this court on April 10, 1916, and on the same day the

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court ordered that the parties be further heard by brief and argument upon the question of the form of judgment to be entered herein and of the mandate to be issued to said board, and as to the form of judgment and mandate the court makes the following decision:

The appeal was submitted to this court on the following stipulation:

Stipulation.—United States General Appraisers. Board No. Three. In the matter of protest No. 769782 of Austin, Baldwin & Co.

It is hereby stipulated and agreed by and between counsel for the importers and Assistant Attorney General for the United States that the record in the reappraisement proceedings (reappraisement No. 73317) before the board, consisting of oral testimony, which was subsequently reduced to the form of an agreed statement of facts, may, as set forth in said agreed statement of facts, together with the accompanying schedules and papers, bound and contained in the accompanying envelope marked "A," be regarded as the record in the reappraisement proceedings, and that such record so constituted may be incorporated herein as part of the record in the above-entitled case.

Dated New York, January 14, 1915.

COMSTOCK & WASHBURN,
Attorneys for Importers.

BERT HANSON,
Assistant Attorney General for the United States. L. J. D.

Indorsed: U. S. Gen. Apprs. Received April 16, 1915.

The agreed statement of facts contained the following provisions:

8. That the question presented for determination is whether the whole or any part (and if so, what part) of the expenses hereafter referred to in paragraphs 9, 10, 11, and 12 of this agreed statement of facts should be included or excluded in fixing the valuation for dutiable purposes of the wax disks in question.

9. That the expenses of the agent or representative of the company from Camden, N. J., to Barranquilla, Colombia, South America, and return was $555.23, as set forth in Schedule A hereto annexed.

10. That the expenses of the agent of the company from Barranquilla inland, during his stay inland, and return to Barranquilla amounted to $882.45, as set forth in Schedule B thereto annexed.

11. That the salary paid to the representative of the company while inland, taking the sound recordings on the wax disks in question, was $95.86.

12. That the values of the wax disks having the track or sound recordings thereon was found by the local appraiser and, as set forth in Schedule C, hereto annexed, includes the value of the wax disks before any record has been made thereon, the salaries or compensation paid to the talent for the sound recordings, plus 10 per centum (10 per cent) for general expenses and plus 8 per centum (8 per cent) for profit.

Dated New York, May 13, 1914.

From the record it appeared that the reappraisement board found that the actual cost of producing the wax records was as follows:

127 blank disks, at 25 cents each	$31.75
Compensation of talent for the production of the vibrations recorded on the 127 disks	1,486.00
Salary of the representative of the Victor Talking Machine Co. while superintending the making of the wax records	95.88
Other expenses incurred for service, furniture, piano, and laboratory	146.55
Total	1,760.18

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To this total the board added for general expenses 20 per cent thereof, or $352.03, and also 8 per cent thereof, or $140.81, for profit, making a grand total of $2,253.02. From this grand total the board subtracted $1,486, paid as compensation to different artists, and found that the sum chargeable equally to all the disks was $767.02, which, divided by 127 disks, produced the sum of $6.06, which represented the cost of each disk, exclusive of compensation paid to secure the vibrations. To this $6.06 was added the sum paid to the artist employed for a particular disk, and the amount thus obtained was considered by the board to be the total cost of production and therefore the value at which that disk should be appraised.

The Board of General Appraisers, sitting as a classification board, sustained the reappraisement, and an appeal was taken from that decision to this court. This court held that the sum of $1,486, compensation paid to talent, was a proper cost of fabrication; that the sum of $95.88, paid for superintending the making of wax records, and the sum of $146.55, expenses incurred for service, furniture, piano, and laboratory, were general expenses; and that 8 per cent of the total outlay should be added for profit. We further held that as the actual general expenses were more than 10 per cent of the total cost of production, the reappraisement board had no authority to add 20 per cent to the total outlay as estimated general expenses. From this it results that this court found, in effect, that the total cost of producing 127 disks calculated in the manner prescribed in paragraph L was $1,900.99.

The stipulation and the agreed statement of facts presented for the decision of the board and the determination of this court on appeal the question whether the whole or any part of the expenses mentioned in paragraphs 9, 10, 11, and 12 of the agreed statement of facts should be included or excluded in fixing the valuation for dutiable purposes of the wax disks in question. That was simply another way of asking the court to determine what was the valuation for dutiable purposes of the wax disks in question. We found, in effect, that the valuation of the 127 disks for dutiable purposes was $1,900.99, and we must hold, by reason of the stipulation and the agreed statement of facts, that liquidation should take place on that basis.

It appears that, in addition to the protest based on the appraisement, there was in the case a protest against the classification of the merchandise. As to whether that protest was well taken or not was not decided by this court. Inasmuch, however, as it was stated in open court on the hearing as to the form of mandate that no point would be made as to the classification of the merchandise, the decision of the board as to that protest (No. 769781) should be affirmed, and it is so ordered.

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The form of judgment to be entered on the decision of the appeal herein and the form of mandate to be issued to the board should be as follows:

Said appeal having heretofore been brought on to be heard before the court and due consideration thereon having been had, it is

Ordered, That the decision of the Board of United States General Appraisers as to protest No. 769781, directed to the classification of the merchandise be affirmed, and that as to protest No. 769782, based on the reappraisement of the merchandise, the decision of the board be reversed.

The liquidation should be had on the basis of a valuation for dutiable purposes of $1,900.99 for the 127 disks involved, and the case is hereby remanded to the board for further proceedings.

Judgment and mandate in accordance herewith are ordered.

(T. D. 36506.)

Metal-thread goods.

SIEGMAN & WEIL *et al.* *v.* UNITED STATES (No. 1620). UNITED STATES *v.* SIEGMAN & WEIL *et al.* (No. 1621).

1. TRIMMINGS—RIBBONS, GALLOONS, GIMPS, BRAIDS, AND BANDS—RELATIVE SPECIFICITY.

In their common meaning, trimmings is a less specific term than ribbons, galloons, gimps, braids, or bands.

2. RIBBON.

A straight selvage is characteristic of ribbons as that term is commonly understood.

3. CONSTRUCTION—PARAGRAPH 150, TARIFF ACT OF 1913—CHANGE OF LANGUAGE SIGNIFIES CHANGE OF MEANING.

Paragraph 179, tariff act of 1909, contained a provision for laces, embroideries, braids, galloons, trimmings, and ornaments. Its successor, paragraph 150, tariff act of 1913, omitted these words. The intention must have been to exclude from the operation of the paragraph laces, embroideries, braids, galloons, trimmings, and ornaments made wholly or in chief value of tinsel wire, lame, bullions, or metal threads. This intention is emphasized by the fact that paragraph 358, tariff act of 1913, was made comprehensive enough to include all laces, embroideries, galloons, and ornaments, and braids and trimmings not specially provided for, whatever might be the yarns, threads, or filaments of which they were composed.

United States Court of Customs Appeals, May 31, 1916.

CROSS appeals from Board of United States General Appraisers, G. A. 7770 (T. D. 35676).

[Modified.]

McLaughlin, Russell, Coe & Sprague and *Sharetts, Coe & Hillis* (*Thaddeus S. Sharretts* and *Edward P. Sharretts* on the brief) for Siegman & Weil *et al.*

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

[Oral argument February 15, 1916, by Mr. Sharretts and Mr. Baldwin.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Narrow woven fabrics of various kinds, composed in chief value of tinsel wire or of metal threads and imported at the port of New York

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were classified by the collector of customs as laces, trimmings, and galloons, composed wholly or in chief value of metal threads, yarns, or filaments. In accordance with this classification, they were assessed for duty at 60 per cent ad valorem under that part of paragraph 358 of the tariff act of 1913 which reads as follows:

358. Laces, * * * and all lace articles of whatever yarns, threads, or filaments composed; * * * galloons, * * * ornaments; braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; trimmings not specially provided for; * * * all the foregoing of whatever yarns, threads, or filaments composed, 60 per centum ad valorem.

The importers protested that the goods were not dutiable as assessed and claimed that they were classifiable under other paragraphs of the tariff act which subjected them to a lower rate of duty. The ground of protest really relied upon, however, by the importers was the claim that some of the goods were tinsel wire, lame or lahn, dutiable at 6 per cent ad valorem and that the rest were fabrics, ribbons, beltings, or other articles, made wholly or in chief value of tinsel wire, lame or lahn, or of metal threads, and dutiable at 40 per cent ad valorem under that part of paragraph 150 which reads as follows:

150. Tinsel wire, lame or lahn, made wholly or in chief value of gold, silver, or other metal, 6 per centum ad valorem; * * * fabrics, ribbons, belting, toys, or other articles, made wholly or in chief value of tinsel wire, lame or lahn, * * * bullions, * * * or metal threads, not specially provided for in this section, 40 per centum ad valorem.

At the hearing before the board, eight exhibits, representing some 52 samples of the merchandise, were introduced in evidence, and as to the commercial designation of the several items making up the different exhibits testimony was introduced on behalf of the Government and the importers.

Among other issues raised by the testimony was the question as to whether certain classes of the goods imported were commercially known as ribbons or beltings or as galloons, gimps, braids, bindings, bands, or trimmings. For a proper appreciation of the testimony tendered on that issue we give the meaning of those terms as they are commonly understood when applied to fabrics or things designed for the ornamentation of fabrics:

Standard Dictionary:

Ribbon.—A narrow strip of fine stuff, usually silk or satin, having two selvages and commonly less than 8 inches in width. Among the varieties of ribbon are *chiné*, *feather-edge*, *ferret*, *galloon*, *love*, *lustring or lustering*, *moire*, *Petersham*, *picot*, *sarsenet*, *satin*, and *taffeta*.

Century Dictionary:

Ribbon.—1. Originally a stripe in a material, or the band or border of a garment, whether woven in the stuff or applied. 2. A strip of fine stuff, as silk, satin, or velvet,

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having two selvages. Ribbons in this sense seem to have been introduced in the sixteenth century. Ordinarily ribbons are made of widths varying from one-fourth of an inch, or perhaps even less, to 7 or 8 inches, but occasionally sash ribbons or the like are made of much greater widths. According to the fashion of the day, ribbons are made richly figured or brocaded, of corded silk with velvet and satin stripes, satin-faced on each side, the two sides being of different colors, each perfect, and in many other styles.

Standard Dictionary; Century Dictionary:

Belting.—Belts collectively, or the material from which belts are made.

Standard Dictionary:

Galloon.—1. A closely woven worsted lace, used for binding. 2. A dress trimming made of cotton or silk embroidered, sometimes with a scalloped edge. 3. A narrow metallic tape woven in silk, worsted, or cotton; used on uniforms, etc.; as silver *galloon.*

Century Dictionary:

Galloon.—1. Originally worsted lace, especially a closely woven lace like a narrow ribbon or tape for binding. * * * 2. In modern use: (a) A fabric similar to the above, of wool, silk, tinsel, cotton, or a combination of any of these. (b) A kind of gold or silver lace with a continuous even edge on each side, used on uniforms, liveries, etc.

New International Encyclopedia:

Galloon.—A narrow, tapelike fabric composed of silk or worsted, or of both. It is usually employed for binding garments, curtains, etc. The small band worn round gentlemen's hats is an example. It is also used as trimming material, and sometimes has a scalloped edge. When woven in gold or silver tinsel it is used as a trimming for uniforms.

Standard Dictionary:

Lace.— * * * 2. An ornamental cord, braid, or gimp of gold or silver, used for edging or decorating garments, etc.; galloon.

Gimp.—A narrow, flat, ornamental trimming, as of silk, cotton, wool, or beads, usually formed of or interlaced with cord or wire; used for dresses, furniture, etc.

Century Dictionary:

Gimp.—A flat trimming made of silk, worsted, or other cord, usually stiffened by wire and more or less open in design, used for borders for curtains or furniture, trimming for women's gowns, etc.

Standard Dictionary:

Braid.—A narrow, flat tape or woven strip for binding the edges of fabrics or for ornamenting them.

Century Dictionary:

Braid.—A narrow textile band or tape, formed by plaiting or weaving together several strands of silk, cotton, wool, or other material, used as trimming for garments, for stay laces, etc.

Standard Dictionary:

Binding.—* * * 3. A braid or strip folded and sewed on the edge of any fabric, or sewed over the place where two parts are joined, so as to protect and secure the parts covered by it.

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cloth, paper, etc. * * * 2. Any flexible strip used as an article of dress, or to strengthen or ornament the clothing; as a neck *band;* hat *band.*

Century Dictionary:

Band.—* * * 2. Anything resembling a band in form or function. * * * (b) A border or strip on an article of dress serving to strengthen it or to confine it, as at the waist, neck, or wrist, as a waist *band;* a wrist *band;* a neck *band.*

Standard Dictionary:

Trimming.—Something added for ornament or to give a finished appearance or effect; that which embellishes or completes. (1) Material attached to a garment or the like for ornamentation.

Century Dictionary:

Trimming.—* * * 3. Anything used for decoration or finish; an ornamental fitting of any sort; usually in the plural, as the *trimmings* of a harness or of a hat.

From these definitions it is apparent that "trimming" in its popular acceptation is a very broad term indeed, and giving to it its common meaning it is evidently a much less specific designation than galloons, gimps, braids, bands, or ribbons designed to be used as a finish, embellishment, decoration, or ornament for garments or other productions. A thing may be a trimming and at the same time a ribbon, galloon, gimp, braid, or band, and from that it follows that unless some special trade meaning has attached itself to the terms we are now discussing, ribbons, galloons, gimps, braids, and bands must be regarded as more specific designations than trimmings. A tariff provision which provides for such articles by name, if any such there be, must therefore, for classification purposes, be preferred to a provision for trimmings not specifically provided for.

The Board of General Appraisers found that items 12851, 12494, 1391, 2662, and 2657 represented by Exhibit 2; item 306, represented by Exhibit 4; items 2291, 1914, and 4986, represented by Exhibit 6; and items 540, 483, 1321, and 12397, represented by Exhibit 7, were ribbons or beltings, and that they were therefore properly dutiable under paragraph 150. As to these items the board sustained the protest, and from that ruling the Government appealed. As to all the other items represented by the several exhibits the board overruled the protest, and from that part of the board's decision the importers appealed.

As appears from the samples, item 540 of Exhibit 7 is a plain loose-woven fabric about one-half inch in width and having two straight selvages. The importers' witnesses, Baruch and Boschen, and the Government's witnesses, Waitzfelder and Runk, testified that this article was known to the trade as a ribbon. The Government's witnesses (Waitzfelder, Schloss, and Runk) testified that it was also a trimming. Importers' witness Hirsch testified that it was a cap band or wire band. The Government admits that the goods repre-

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sented by this item number are ribbons and that the board's decision as to them is correct.

Items 2662 and 2657 of Exhibit 2, and item 4986 of Exhibit 6, represent goods having two straight selvages, the first two items having a width of 1 inch and the third a width of 1¾ inches. The weave of all three items is closer, thicker, and more ornamental than that of item 540 of Exhibit 7. Importers' witnesses, Weil, Hirsch, Baruch, and Boschen, and Government's witness Runk, testified that they represented goods which were known to the trade as belting. The Government's witnesses, Waitzfelder and Schloss, testified that they were known as galloons or trimmings. The Government admits that the merchandise represented by the last three items mentioned is beltings and that for the purposes of the case it is admitted that the board did not err in holding them to be dutiable under paragraph 150.

Items 12851, 12494 of Exhibit 2, and 12397 of Exhibit 7, represent goods with two straight selvages, having a loosely woven foundation through which is run a closely woven ornamental design. The ornamental design is the only feature which substantially distinguishes these goods from item 540 of Exhibit 7, which is conceded by the Government to be ribbon. Importers' witnesses Weil, Hirsch, Baruch, and Boschen testified that these goods were ribbons. Boschen testified that they were also beltings. Government witnesses Waitzfelder, Schloss, and Runk testified that they were trimmings. Waitzfelder and Schloss testified that they were also galloons, and Waitzfelder said that they were likewise gimps. The Government's witness Sutro declared that they were bands or braids, and Waitzfelder, Sutro, and Runk said that they were not ribbons, and Waitzfelder declared that they were not belting. The fact that ribbon can be used for belting and also as a trimming may in some measure explain the conflicting testimony as to whether the goods are known in the trade as a trimming, belting, or ribbon. But, however that may be, the board found that their status as ribbons had been established by a preponderance of the testimony and that finding we are not disposed to disturb, especially as the exhibits themselves warrant the conclusion that the goods are ribbons within the common meaning of the term. We are, therefore, of the opinion that the protest was properly sustained as to these items.

Importers' witnesses Weil, Baruch, and Boschen testified that the merchandise represented by item 1391 of Exhibit 2 was known to the trade as belting. It was also referred to by Weil as a sling lace. Hirsch, another witness for the importers, said that it was known to the trade as a belt webbing or, better said, belt-sling webbing. Waitzfelder and Schloss, witnesses for the Government, said that they would call the goods trimmings. Inasmuch as slings are the straps

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of sword belts from which the scabbard is suspended and a sling lace may be regarded as an ornamental braid for making a sling, which is part of a belt, we think the testimony submitted by the importers as to the item just referred to is not in conflict and that it clearly outweighs that of the Government witnesses, who testified to the name assigned by *them* to the article rather than to its trade designation. On the evidence brought out at the hearing, we think the board was justified in holding that the merchandise represented by item 1391, Exhibit 2, was known to the trade as belting, and therefore dutiable under paragraph 150, as claimed in the protest.

Items 306 of Exhibit 4, 483 of Exhibit 7, and 1914 and 2291 of Exhibit 6 are flat, closely woven ornamental fabrics, having both edges either scalloped or serrated and varying in width from one-half inch to 1⅝ inches.

Item 1914 is a thinner, narrower, more flexible, and less ornamental stuff than that represented by items 306, 483, and 2291, which are apparently brocaded and do not differ materially from one another except in width. Importers' witnesses Weil and Baruch testified that item 1914, which is only one-half inch in width, was known to the trade as a ribbon. Importers' witnesses Baruch and Boschen declared that it was a belting. Importers' witness Hirsch said it was a braid, metal galloon, or metal braid. Government's witnesses Waitzfelder, Schloss, and Runk said that it was a trimming. Waitzfelder also said that it was a galloon. Runk stated further that it was an upholstery trimming and that it was not a ribbon or belting.

Importers' witnesses Weil and Baruch testified that item 306, which is 1⅜ inches in width, was a ribbon. Weil said that it was a binding. Importers' witnesses Baruch and Boschen said that it was a belting. Importers' witness Hirsch declared that it was known as a galloon metal border and also as a webbing. Government's witnesses Waitzfelder, Schloss, and Runk said that it was a trimming and Runk declared it to be an upholstery trimming. Sutro and Runk stated that it was not known as ribbon or belting.

As to item 483, which is 1⅝ inches wide and substantially the same goods as item 306, Weil and Baruch for importers testified that it was a ribbon, and Weil, Baruch, and Boschen that it was a belting. Hirsch, another witness for the importers, stated that it was a galloon metal border or metal band. Weil admitted that some departments in dry goods stores called it a galloon and others a braid. He also said that some wholesalers called it upholstery lace and others a binding. Three witnesses for the Government stated that this same merchandise was a trimming. One of these witnesses said it was a galloon, and another declared it was known as an upholstery trimming and that it was not ribbon or belting.

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As to item 2291, which is three-fourths of an inch wide, and differs substantially from items 306 and 483 only in width, two witnesses for the importers testified that it was a ribbon, two that it was a belting, and one that it was a galloon metal border or metal band. Three of the Government witnesses declared that it was known to the trade as a trimming, and one of the three said that it was an upholstery trimming and that it was not ribbon or belting. We do not think that the importer established a trade designation for the last four named items by a preponderance of testimony. None of the four items has a straight selvage, which we consider to be characteristic of ribbons as that term is commonly understood, and therefore none of them can be classified as ribbons within the popular meaning of the term. It may be that they are used as a material to make belts, but if so it was not shown by the importers that they were chiefly used for that purpose rather than as a trimming. No commercial designation having been established, we must therefore hold that the four items last referred to are not classifiable for tariff purposes as ribbons or beltings and that the collector's classification should stand.

Item 1321 of Exhibit 7 is a closely woven tapelike band, made by weaving a metal thread over silk or cotton threads or yarns. The merchandise is less than half an inch wide and has two straight selvages. Two of the importers' witnesses testified that this item was commercially known as a ribbon, and one of them said that it was also known as a binding. Boschen at first testified that he knew nothing about it, but finally said it was belting. Hirsch declared that it was a cap lace or cap band. Government's witnesses Waitzfelder, Schloss, and Runk declared that it was a galloon, and Runk stated that it was an upholstery trimming, and not ribbon or belting. We do not think that this testimony was sufficient to establish that the goods represented by item 1321 was uniformly, generally, and definitely known to the trade and commerce of the country as ribbons or belting. They have two straight selvages and conform in a way to the popular conception of a ribbon. As we have already seen, however, the common meaning of "ribbon" embraces a class of ribbon known as galloon ribbon, and there is a class of galloon which is described as "a narrow metallic tape woven in silk, worsted, or cotton, used on uniforms, etc., as silver galloon." (Standard Dictionary.) "A kind of gold or silver lace with a continuous even edge on each side, used on uniforms, liveries, etc." (Century Dictionary.) "A narrow tapelike fabric, composed of silk or worsted, or of both * * *. When woven in gold or silver tinsel it is used as a trimming for uniforms." (New International Encyclopedia.) We think the merchandise of which item 1321 is a sample responds to these descriptions and would be commonly regarded as a kind of

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galloon. We must therefore hold that it is classifiable as a galloon, rather than as a ribbon or belting.

Item 2041 of Exhibit 7 is tinsel wire or lame, and as tinsel wire, lame or lahn, made wholly or in chief value of gold, silver, or other metal is provided for *eo nomine* in paragraph 150 and subjected to a duty of 6 per cent ad valorem, we are of opinion that the goods represented by that item should have been assessed at that rate and no more.

The goods remaining are not claimed to be ribbons, beltings, or toys. They are laces, braids, ornaments, or trimmings, and are composed of tinsel wire, bullion, or metal threads. Though they are not ribbons, beltings, or toys, they are, of course, articles or fabrics, and as such they might well be classified under paragraph 150 were it not for the fact that such classification would be at variance with the intention of Congress as evidenced by the history of the legislation. Paragraph 179 of the tariff act of 1897, which is the prototype of the provision of paragraph 150 of the present tariff law, is as follows:

179. Tinsel wire, lame or lahn, made wholly or in chief value of gold, silver, or other metal, five cents per pound; bullions and metal threads, made wholly or in chief value of tinsel wire, lame or lahn, five cents per pound and thirty-five per centum ad valorem; laces, embroideries, braids, galloons, trimmings, or other articles, made wholly or in chief value of tinsel wire, lame or lahn, bullions, or metal threads, sixty per centum ad valorem.

That paragraph was amended by paragraph 179 of the tariff act of 1909 so as to read as follows:

179. Tinsel wire, lame or lahn, made wholly or in chief value of gold, silver, or other metal, 5 cents per pound; bullions and metal threads, made wholly or in chief value of tinsel wire, lame or lahn, 5 cents per pound and 30 per centum ad valorem; fabrics, laces, embroideries, braids, galloons, trimmings, ribbons, beltings, ornaments, toys, or other articles, made wholly or in chief value of tinsel wire, lame or lahn, bullions, or metal threads, 15 cents per pound and 60 per centum ad valorem.

The amendment changed the rate of duty and enlarged the scope of the predecessor paragraph by including fabrics, ribbons, and beltings. Paragraph 150 of the tariff act of 1913 amended out of paragraph 179 of the tariff act of 1909 the provision for laces, embroideries, braids, galloons, trimmings, and ornaments. From that amendment but one conclusion can be drawn, in our opinion, and that is that Congress intended to exclude from the operation of paragraph 150 laces, embroideries, braids, galloons, trimmings, and ornaments made wholly or in chief value of tinsel wire, lame, bullions, or metal threads. That intention was emphasized, we think, by making paragraph 358 comprehensive enough to include all laces, embroideries, galloons, and ornaments, and braids and trimmings not specially provided for, whatever might be the yarns, threads, or filaments of which they were composed.

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With the exception of the bow knots, tassels, stars, and some of the fringes, the goods we are now discussing not only belong to one or other of the classes of goods expressly excluded from the operation of paragraph 150, but they are made wholly or in chief value of threads or filaments. Such goods are therefore strictly within the terms of paragraph 358 and are dutiable as therein provided.

The bow knots, which are made of tinsel wire, possibly too coarse to be regarded as filaments, the tassels and fringes, made of bullions and metal threads, and the stars made of bullions and metal spangles, even if they be regarded as composed in chief value of the materials specified in paragraph 150 *and not covered by the provisions of paragraph 358*, are, nevertheless, either ornaments or trimmings, and therefore they can not be classified under paragraph 150. To hold otherwise would simply mean the reading into that paragraph of words which Congress deliberately omitted by striking them out of the provision of which paragraph 150 is amendatory. Horstman *v.* United States (6 Ct. Cust. Appls., 458; T. D. 35986). While they are not dutiable under paragraph 358, neither are they dutiable under any of the paragraphs claimed by the importers, and consequently the classification and assessment of duty on the goods as made by the collector must stand.

In conclusion, we hold that items 1391, 2657, 2662, 12494, and 12851 of Exhibit 2, item 4986 of Exhibit 6, and items 540 and 12397 of Exhibit 7 are dutiable under paragraph 150, and as to them the decision of the Board of General Appraisers is affirmed. As to items 306 of Exhibit 4, 1914 and 2291 of Exhibit 6, and 483 and 1321 of Exhibit 7, we decide that they are not ribbons or beltings, and that as they are within the enumerations of paragraph 358 the decision of the Board of General Appraisers as to them should be, and is, reversed. Item 2041, as before stated, is tinsel wire provided for *eo nomine* in paragraph 150, and as to that item the decision of the board should be, and is, reversed. The decision of the Board of General Appraisers in all other particulars is hereby affirmed.

Modified.

(T. D. 36507.)

Metal fittings for hand bags.

RUMPP & SONS *et al.* *v.* UNITED STATES (NO. 1627).

1. ARTICLES DESIGNED TO BE CARRIED ON OR ABOUT OR ATTACHED TO THE PERSON.

Small brass-bound memorandum books with brass-capped lead pencil so fitted to the binding as to keep the book closed when not in use and small metal pencil cases and holders, having an individuality of their own in that they are suitable to be carried as separate entities as well as in hand bags, belong to the class of articles which are designed to be carried on or about or attached to the person, and are dutiable as such under paragraph 356, tariff act of 1913.

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Metal handles for small articles of personal convenience (such as buttonhooks), pin and needle boxes, buttonhooks, tweezers, manicuring implements, pin or hairpin boxes, and perfume or smelling-salt flasks are shown by the testimony and by their shape, size, and construction not to be articles designed to be carried on or about or attached to the person. They are not dutiable as such under paragraph 356, tariff act of 1913, but as articles or wares of metal under paragraph 167.

3. Small Containers of Vanity Articles and Preparations.

Metal powder boxes, powder puff boxes, eyebrow pencil cases, and lip-stick boxes are suitable containers for vanity articles and preparations and were, so far as the record shows, properly classified by the collector under paragraph 356, tariff act of 1913.

4. Mirrors for Vanity Cases.

Small mirrors suitable for use in fitting out vanity cases are not dutiable as parts of vanity cases under paragraph 356, tariff act of 1913, but as mirrors under paragraph 95.

United States Court of Customs Appeals, June 6, 1916.

Appeal from Board of United States General Appraisers, Abstracts 38550, 38760, and 38765.

[Modified.]

Comstock & Washburn (*Albert H. Washburn* and *J. Stuart Tompkins* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument February 8, 1916, by Mr. Washburn and Mr. Hanson.]

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

Smith, Judge, delivered the opinion of the court:

Fittings for leather bags, dressing cases, manicure cases, and other leather cases and boxes imported by C. F. Rumpp & Sons, Langfeld Bros., Dingelstedt & Co., and John Wanamaker, were classified by the collectors of customs as articles composed of metal valued above 20 cents per dozen pieces and designed to be worn on the apparel or carried on or about or attached to the person, and were accordingly assessed for duty at 60 per cent ad valorem under that part of paragraph 356 of the tariff act of 1913 which reads as follows:

356. * * * Articles valued at above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles. card cases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semi-precious stones, pearls, cameos, coral, or amber, or with imitation precious stones or imitation pearls, 60 per centum ad valorem. * * *

All of the importers protested that the goods imported were dutiable under the provisions of paragraph 167 of the tariff act of 1913 either at 20 per cent ad valorem as articles of metal or at 50 per cent ad

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valorem as articles of metal plated with gold or silver. Paragraph 167 reads as follows:

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

In addition to these grounds of objection to the classification of the collector, Dingelstedt & Co. claimed that the goods were dutiable under various other paragraphs of the tariff act, and apparently based such claims either on the ground that the merchandise was more specifically provided for therein or on the ground that the several articles were classifiable thereunder by reason of the component material of chief value.

The Board of General Appraisers overruled the protests of the several importers in separate decisions, and from those decisions the importers took an appeal to this court.

As appears from the record and samples in evidence the goods involved in the case of C. F. Rumpp & Sons are metal handles, apparently designed to be fitted to a buttonhook or other small implement; tubular-shaped metal boxes, about 2 inches long and ½ inch in diameter, suitable for holding lip sticks; flat metal boxes, 1¾ inches in diameter by about one-half inch in depth and fitted for use as powder boxes; spatula-shaped metal instruments without handles and apparently designed to be used in pressing back the cuticle from the finger nails; steel tweezers and buttonhooks, fitted with brass handles; brass boxes, 2¾ inches long by 1½ inches wide, with ellipsoidal sides and available as containers for pins or hairpins; small brass flasks for holding perfume, smelling salts, or other liquid preparations; small brass-bound memorandum books with brass-capped lead pencil, so fitted to the metal binding as to keep the book closed when not in use.

Phillip E. Roth, a witness for the importers, testified that the several articles were imported for use as fittings for leather dressing cases, manicure cases, work baskets, ladies' hand bags, and cases of like character made of leather. He stated that two or three of the pieces could be used as fittings for vanity cases, but the particular pieces which might be so used were not identified. In our opinion, however, the only articles available for the making up of vanity cases are the small flat boxes which might be used for containing face powder and powder puffs and the small tubular boxes which might be used for holding lip sticks. Whether these particular boxes are chiefly used for leather vanity cases or for metal vanity cases does not appear from the evidence. The collector, however, classified them under paragraph 356, and for the purposes of this case at least

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we must assume that they are chiefly used in making metal vanity cases.

The goods involved in the protest of Langfeld Bros. are metal lead pencil and eyebrow pencil holders, metal pin and needle cases, and also metal lip stick tubes, memorandum books, pin or hairpin boxes, and small flasks of the same general character as those covered by the protest of C. F. Rumpp & Sons. According to the uncontradicted testimony submitted by the importers, the articles just enumerated are used as fittings for ladies' hand bags made of leather. Illustrative of the method of using these articles, a leather hand bag was put in evidence. This bag was provided with small cloth pockets, which contained a pin or hairpin case of brass, a brass lead-pencil holder, and a small mirror in a brass frame. In the body of the bag there was also a coin purse composed of leather and brass.

The protest of Dinglestedt & Co. contested the classification of brass or nickel-plated perfume and smelling salt flasks; small round nickel-plated metal powder boxes; small round nickel-plated metal boxes beveled at the edges, each containing a powder puff; oblong nickel-plated metal pin or hairpin boxes; and a small mirror in a nickel-plated metal frame. The testimony offered by the importers was to the effect that all of these conveniences were used as fittings for ladies' hand bags, and that none of them was a vanity case. A leather bag was offered and received in evidence illustrative of the manner of fitting such bags with articles of the kind described. This bag was provided with cloth pockets, in which were placed a small mirror in a metal frame, a metal perfume flask, a metal powder box, a metal puff box, and a metal pin or hairpin case. The body of the bag contained a small leather purse having a nickel-plated frame.

The protest of John Wanamaker objected to the classification of small, round, shallow brass powder boxes, flat brass perfume or smelling salts flasks, and oblong pin or hairpin cases. The top of the powder boxes and one side of the flasks and hairpin cases are apparently enameled. It appears from the record that these powder boxes, perfume flasks, and pin or hairpin cases are used as fittings for leather traveling bags, traveling cases, ladies' hand bags, motoring and party cases, and other kinds of fitted leather cases.

With the exception of the metal handles, buttonhooks, tweezers, lead-pencil cases, and metal-bound memorandum books of which the pencils or metal pencil cases form a part, and possibly the manicuring implements, all of the articles covered by the various protests are in their very nature designed chiefly, if not wholly, for the use of women. Metal pencil cases and memorandum books, with metal pencil holders and pencils attached thereto, are used by both men and women and are carried as independent articles on or about the person by men. The pencil cases and the memorandum books with

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metal pencil holders attached here in controversy are susceptible of use by men, and, just as they are, can be carried by men in the pocket in the same way as are ordinary lead pencils and memorandum books. There is no evidence showing or tending to show that the pencil cases, memorandum books, or metal pencil holders under discussion are chiefly used as fittings for leather bags, and as against the presumption of correctness attaching to the collector's decision we can not assume that they are not chiefly used by men. As the record stands, we must therefore hold that the metal pencil cases, metal-bound memorandum books, and metal pencil holders are articles which in the form they had on importation are designed to be carried by men on or about or attached to the person, and that therefore they were properly classified by the collector under paragraph 356 and dutiable as assessed by him.

The metal handles, buttonhooks, tweezers, and possibly the manicuring implements are used by both men and women. It can not be said, however, that they are customarily or usually carried by men or that their form or nature marks them as articles designed to be carried by men on or about the person. The lip-stick boxes, powder boxes, pin and needle boxes, pin or hairpin boxes, perfume or smelling-salts flasks, and small mirrors are used chiefly, if not exclusively, by women, and certainly none of them can be regarded as part of the equipment usually carried by men for their personal pleasure, comfort, or convenience. As to all of the articles, with the exception of the metal pencil cases, metal memorandum books, and metal pencil holders, the question on appeal finally reduces itself, therefore, to this: Are any of the articles designed to be carried by women on or about or attached to the person? None of them is provided with a ring or chain or other means for carrying it on or about or attached to the person. Clearly it would not be practicable or convenient for women to carry them in the hand. More than that, their shape, size, and make-up must be regarded as convincing evidence that they were not intended to be carried by women as independent entities, and that they were designed to be used as fittings for hand bags or other receptacles.

It is true that ladies' leather hand bags fitted with articles of the kind now under discussion and ladies' vanity cases fitted with some of them are carried on or about or attached to the person. Such articles, however, when permanently fitted to ladies' hand bags or vanity cases, lose their identity as distinct entities and become as much parts in the tariff sense of the fitted hand bags or vanity cases as are the straps or chains by which the hand bags or vanity cases are carried. When carried or used in traveling as fittings of leather bags or vanity cases the conveniences are, therefore, carried on or about or attached to the person as constituents of the entirety of

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which they are a part and not as things having an individuality of their own. Sussfeld, Lorsch & Co. *v.* United States (5 Ct. Cust. Appls., 382, 384; T. D. 34875).

Considered as distinct entities and not as fittings for bags or cases it is evident that the metal handles, buttonhooks, small mirrors, tweezers, manicure implements, pin and needle boxes, powder boxes, perfume flasks, powder-puff boxes, lip-stick boxes, and pin or hairpin boxes are, by reason of their very nature, not designed to be carried by men on or about or attached to the person, and it is equally evident from their construction that they are not intended to be so carried by women. If they be regarded as fittings for ladies' hand bags or vanity cases, the question immediately arises, What provision of the tariff act is applicable to them as such parts or fittings? Leather bags and leather cases fitted and furnished with traveling, bottle, drinking, dining, luncheon, and similar sets are specifically enumerated in paragraph 360, but fittings, furnishings, or parts of such bags or cases are not specifically provided for in that or any other provision of which we are aware. The goods we are discussing now, however, are not only fittings for leather bags or cases, but they are also articles or wares composed wholly or in part of metal, and therefore they are within the provisions of paragraph 167.

The powder boxes, eyebrow-pencil cases, and the lip-stick cases are receptacles for preparations designed to be used on the face, lips, eyebrows, and perhaps eyelashes. The powder-puff boxes are intended to hold tiny powder puffs, and the small mirrors may be used to facilitate the application of the powder and other preparations. Saying nothing of the testimony in two of the cases, we think we may fairly conclude from the form and size of the powder boxes, eyebrow-pencil cases, powder-puff boxes, and lip-stick cases that they are suitable containers for vanity articles and preparations and that they are parts of vanity cases as distinguished from the things contained and designed for use. Whether they are chiefly used as fittings for leather bags rather than as parts of metal vanity cases does not, as we have already said, appear from the evidence, but inasmuch as the collector held them to be dutiable under paragraph 356, we must presume that they are chiefly used as parts of vanity cases composed of metal. They are, therefore, at one and the same time fittings for leather bags, articles of metal, and parts of vanity cases composed of metal. They are provided for in paragraph 167 as articles or wares composed of metal and in paragraph 356 as parts of vanity cases. As the provision for parts of vanity cases composed of metal is less comprehensive than the provision for articles or wares composed of metal, it follows, on the record submitted to us, that the powder boxes, eyebrow-pencil cases, lip-stick cases, and powder-puff boxes which are suitable for vanity cases are more specifically

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provided for in paragraph 356, and are therefore dutiable at 60 per cent ad valorem, as found by the collector. The small mirrors are, it is true, suitable for use in fitting out vanity cases, but as they are to be numbered among the things which the vanity case is designed to hold, they can not be considered as parts of vanity cases, inasmuch as they do not serve in any way to make the vanity case serviceable as a container. As mirrors are provided for *eo nomine* under paragraph 95 they are dutiable under that provision.

Taking into account the presumption of correctness attaching to the finding of the collector, the evidence in the record, and the nature and character of the wares in controversy, we find—

First. That the metal pencil cases, metal-bound memorandum books with metal pencil holders attached thereto, belong to the class of articles which are carried by men on or about or attached to the person, and that they are therefore dutiable at 60 per cent ad valorem, as assessed by the collector.

Second. That the metal handles, buttonhooks, tweezers, pin and needle boxes, pin or hairpin boxes, and perfume or smelling-salts flasks are not articles which are customarily or usually carried by men on or about or attached to the person, and that their shape, size, and construction are of a character which renders them unsuitable to be so carried by women as separate entities. They are, in our opinion, articles or wares composed of metal, and if plated with gold or silver should be assessed at 50 per cent ad valorem under the provisions of paragraph 167.

Third. The metal powder boxes, powder-puff boxes, eyebrow-pencil cases, and lip-stick boxes, are suitable containers for vanity articles and preparations, and giving proper weight to the finding of the collector they must be regarded as parts of vanity cases composed of metal. They are therefore dutiable at 60 per cent ad valorem as parts of vanity cases under the provisions of paragraph 356.

In the case of C. F. Rumpp & Sons *v.* United States, the decision of the Board of General Appraisers is reversed as to the metal handles, button-hooks, manicuring implements, tweezers, pin or hairpin boxes, and perfume or smelling-salts flasks, and such decision is affirmed as to the metal-bound memorandum books with pencils attached, the powder boxes, and the lip-stick boxes.

In the case of Langfeld Bros., the decision of the Board of General Appraisers is reversed as to the pin and needle cases, pin or hairpin boxes, perfume or smelling-salts flasks, and it is affirmed as to the metal-bound memorandum books with pencils and metal pencil holders attached, lip-stick boxes, lead-pencil cases, and eyebrow pencil cases.

In the case of Dingelstedt & Co. *v.* United States, the decision of the Board of General Appraisers is reversed as to the mirrors, pin or

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hairpin boxes, and the perfume or smelling-salts flasks, and it is affirmed as to the powder boxes and powder-puff boxes.

In the case of John Wanamaker *v.* United States, the decision of the Board of General Appraisers is reversed as to the pin or hairpin boxes and the metal perfume or smelling-salts flasks, and it is affirmed as to the enameled powder boxes.

Modified.

CONCURRING OPINION.

BARBER, Judge, with whom MARTIN, Judge, agrees:

I concur in the conclusion reached by the court as to all these articles.

In my judgment, however, the metal powder boxes, powder-puff boxes, eyebrow pencil cases, and lip-stick boxes are no parts of vanity cases, but are rather designed to be contents of such or other cases. I think, however, such articles are classifiable under paragraph 356, because (*a*) powder cases are *eo nomine* provided for therein, and (*b*) the eyebrow pencil cases and lip-stick cases are like articles to others *eo nomine* therein mentioned. All these articles serve the purpose of promoting the personal comfort and convenience of the carrier within the rule laid down by this court in Gallagher & Ascher *v.* United States (6 Ct. Cust. Appls., 105; T. D. 35343) and other cases recently decided.

The fact that, as the record here shows, they are imported to be put into ladies' hand bags or other leather bags or cases does not, in my judgment, militate against this conclusion, because when put into those receptacles they are, as the record in this case shows, carried on or about the person in pursuance of the purpose for which they were designed.

I am moved to make these suggestions in this manner because of the view I entertain that the term "vanity cases" as used in that paragraph relates to vanity cases composed wholly or in chief value of metal or of which metal is the predominant material, but that the term "parts of" as relating to such cases should not be extended to fittings therefor unless such fittings are designed to be immovably attached to the cases, as by soldering or other permanent method of attachment, which is not the case here.

(T. D. 36508.)

Spruce gum—Drugs.

UNITED STATES *v.* EASTERN DRUG CO. (No. 1647). UNITED STATES *v.* PERKINS CO. (No. 1648).

1. SPRUCE GUM.

There being no evidence in the record that spruce gum is a drug, it can not be classified under either paragraph 27 or 477, tariff act of 1913.

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2. EVIDENCE—COLLECTOR'S CLASSIFICATION PRESUMPTIVELY CORRECT.

The collector's classification of spruce gum under paragraph 27, tariff act of 1913, though erroneous, must stand when the only claim in the protest is for classification under paragraph 477, also erroneous

United States Court of Customs Appeals, May 31, 1916.

APPEALS from Board of United States General Appraisers, Abstract 38383.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Eugene C. Brokmeyer and *Leonard J. Mather* for appellees.

[Oral argument April 11, 1916, by Mr. Hanson and Mr. Mather.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Spruce gum was classified by the collector of customs at the port of Portland, Me., as spruce gum advanced in value. The merchandise was assessed for duty at 10 per cent ad valorem under that part of paragraph 27 of the tariff act of 1913 which reads as follows:

27. Drugs, such as barks, beans, berries, * * * gums, * * *; any of the foregoing which are natural and uncompounded drugs and not edible, and not specially provided for in this section, but which are advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture, 10 per centum ad valorem: * * *.

The importers claim that the merchandise was free of duty under that part of the free list reading as follows:

FREE LIST.

That on and after the day following the passage of this act, except as otherwise specially provided for in this act, the articles mentioned in the following paragraphs shall, when imported into the United States * * * be exempt from duty:

* * * * * * *

477. Drugs, such as barks, beans, berries, * * * gums, * * *; any of the foregoing which are natural and uncompounded drugs and not edible, and not specially provided for in this section, and are in a crude state, not advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture: * * *.

The Board of General Appraisers sustained the protest, and the Government appealed.

We have very carefully examined the record in this case and we do not find any evidence whatever showing or tending to show that spruce gum is a drug or that it is used as a medicine or in the compounding of medicines or that it is a stuff used in dyeing or in chemical operations. It is true that the collector has assessed the merchandise for duty under paragraph 27, but he did not, as claimed by the appellees, find that spruce gum was a drug. Spruce gum is, of course,

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a gum, but the gums provided for in paragraph 27, and also in paragraph 477 of the free list, must be of the kind and class which fall within the category of drugs. As the spruce gum was not shown to be a drug, we must hold, in conformity with the decision of this court in United States *v.* Maine Central Railroad (7 Ct. Cust. Appls., —; T. D. 36427), that it was not classifiable under either paragraph 27 or paragraph 477. See also United States *v.* Leavitt (7 Ct. Cust. Appls., —; T. D. 36460).

In the protest of the importers no claim was made other than that the merchandise was entitled to free entry under paragraph 477, and from that it follows that the assessment of the collector must stand, although we do not approve his action in assessing it for duty under paragraph 27.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 36509.)

Structural shapes—Alloy steel.

KUYPER & CO. *v.* UNITED STATES (No. 1683).

1. CONSTRUCTION—PARAGRAPHS 104 AND 110, TARIFF ACT OF 1913.
It was not the legislative purpose to include in paragraph 104, tariff act of 1913, structural shapes of steel containing nickel alloy.

2. STRUCTURAL SHAPES OF NICKEL-ALLOYED STEEL, HOW DUTIABLE.
Structural shapes of nickel-alloyed steel are dutiable as pressed shapes composed of steel and containing nickel as an alloy under paragraph 110, tariff act of 1913, and not as structural shapes of steel under paragraph 104.

United States Court of Customs Appeals, May 31, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39190.

[Affirmed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney, of counsel), for the United States.

[Oral argument April 13, 1916, by Mr. Brown and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Certain structural steel shapes imported at the port of New York were classified by the collector of customs as pressed shapes composed of steel and containing nickel as an alloy. The importation was assessed for duty at 15 per cent ad valorem under that part of paragraph 110 of the tariff act of 1913 which reads as follows:

110. * * * Pressed, sheared, or stamped shapes not advanced in value or condition by any process or operation subsequent to the process of stamping; * * * all the foregoing when made by the crucible, electric, or cementation process, either

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with or without alloys, and finished by rolling, hammering, or otherwise, and all steels, by whatever process made, containing alloys such as nickel, cobalt, vanadium, * * * and similar alloys, 15 per centum ad valorem.

The importers protested that the goods were structural shapes of steel and therefore dutiable at 10 per cent ad valorem under the provisions of paragraph 104 which, in so far as pertinent, reads as follows:

104. Beams, girders, * * * channels, car-truck channels, * * * sashes, frames, and building forms, together with all other structural shapes of iron or steel, whether plain, punched, or fitted for use, or whether assembled or manufactured, 10 per centum ad valorem.

The Board of General Appraisers overruled the protest and the importers appealed.

That the goods are structural shapes of steel and that they contain nickel alloy does not appear to be disputed. Paragraph 104 does not provide for structural shapes of steel containing an alloy. Paragraph 110, on the other hand, in terms imposes a duty of 15 per cent ad valorem on all steels, by whatever process made, containing alloys such as nickel, cobalt, and so forth. That provision in paragraph 110 inclines us to the view that it was not the legislative purpose to include in paragraph 104 structural shapes of steel containing nickel alloy. If it were otherwise, the steel bar alloyed with nickel out of which the pressed structural shape is made would be subjected to a duty of 15 per cent, but once given by pressing the shape required it would carry a duty of only 10 per cent ad valorem. We can not favor an interpretation of paragraph 104 which would bring about such an anomaly as that, especially as the language of the provision is open to a construction which would give it an effect in accordance with the rules which usually obtain in the making of tariff laws.

Congress evidently regarded all steels containing nickel, cobalt, or similar alloys as high-grade steels, and the exclusion from paragraph 104 of structural shapes of steel containing nickel brings that provision into harmony with that part of paragraph 110 which imposes on all steels alloyed with nickel, cobalt, and so forth, and by whatever process made, a duty of 15 per cent ad valorem.

The decision of the Board of General Appraisers is *affirmed*.

(T. D. 36510.)

Mohair coat linings.

ROSENBERG & CO. *v.* UNITED STATES (No. 1587).

1. CONSTRUCTION—LEGISLATIVE HISTORY SHOWING INTENT.

The language of successive tariff acts shows that Congress has always either considered the hair of the Angora goat not to be wool, or has thought it best, for purposes of greater certainty, to refer specially to it and treat it independently of wool as a subject of classification.

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2. CONSTRUCTION—LEGISLATIVE HISTORY SHOWING INTENT.

The history of the passage of the tariff act of 1913 indicates that Congress intende to impose a higher rate of duty upon the products, fabrics, and manufactures of tl hair of the Angora goat than upon similar articles when composed of the hair of ce tain other animals.

3. CONSTRUCTION—CHANGE OF LANGUAGE SIGNIFYING CHANGE OF MEANING.

In the tariff acts of 1897 (par. 383) and 1909 (par. 395) it was provided that whe the word "wool" is used in connection with a manufactured article of which it is component material it shall be held to include the wool or hair of the sheep, came goat, alpaca, or other animal. The corresponding provision in the tariff act 1913 (par. 304) omits the words "goat, alpaca," and changes the broad provisic "other animal" to the narrower one "other like animals." To hold that a mani facture of wool, under the tariff act of 1913, includes a manufacture of Angora go hair would be to deny any meaning to this change in legislative language.

4. CONSTRUCTION AIDED BY CONTEXT—TAUTOLOGY TO BE AVOIDED.

Paragraphs 305 to 309, inclusive, tariff act of 1913, levy duty upon the hair of th Angora goat and products, fabrics, and manufactures of it. If the term "wool," used in the act in connection with manufactures, includes Angora goat hair, the provisions are unnecessary.

5. CONSTRUCTION—GENERAL DESCRIPTION PREVAILS OVER EO NOMINE ONE IF CO GRESS SO INTENDED.

The rule that an *eo nomine* designation prevails over a general description mu give way to an expressed intention of Congress to the contrary.

6. ANGORA GOAT HAIR COAT LININGS IN THE PIECE, HOW DUTIABLE.

Angora goat hair coat linings, not cut to form or shape, are dutiable as a man facture of Angora goat hair under paragraph 308, tariff act of 1913, and not as co linings of wool under paragraph 290.

United States Court of Customs Appeals, May 31, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7741 (T. D. 35541

[Affirmed.]

Curie, Smith & Maxwell (*Thomas M. Lane* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Charles D. Laurence*, special attorney, counsel), for the United States.

[Oral argument December 10, 1915, by Mr. Lane and Mr. Lawrence.]

Before SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise in this case, it is agreed, is so-called coat lining and is in chief value of the hair of the Angora goat. As represente by the sample submitted, it appears to be thin cloths, of variou colors, apparently imported in the web or piece. It is not cut t form or shape and we understand is to be used as material.

There is no issue of fact, the sole controversy being whether th merchandise shall be classified under paragraph 308 of Schedule I of the tariff act of 1913, as claimed by the Government and hel by the Board of General Appraisers, or under paragraph 290 thereo as claimed by the importers. These paragraphs are as follows:

290. Women's and children's dress goods, coat linings, Italian cloths, bunting, an goods of similar description and character, composed wholly or in chief value of woo and not specially provided for in this section, 35 per centum ad valorem.

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308. Cloth and all manufactures of every description made by any process, wholly or in chief value of the hair of the Angora goat, alpaca, and other like animals, not specially provided for in this section, 40 per centum ad valorem.

As the determination of the question involves the construction of paragraph 304, that also is here quoted:

304. Whenever in this section the word "wool" is used in connection with a manufactured article of which it is a component material, it shall be held to include wool or hair of the sheep, camel, or other like animals, whether manufactured by the woolen, worsted, felt, or any other process.

The importers' contention is that the term "wool," both in its common meaning and as used in said Schedule K, includes the hair of the Angora goat; that therefore "wool" as used in paragraph 290 includes such hair; that the term "coat linings" employed in said paragraph is an *eo nomine* description of the merchandise here, and takes precedence over the generic name "cloth" in paragraph 308, as well as over the descriptive designation "all manufactures of every description made by any process, wholly or in chief value of the hair of the Angora goat," also contained therein; and finally, that there is nothing in the language or legislative history of Schedule K showing an intention to remove "coat linings" from their long-established classification under paragraph 290 and its predecessors.

For the Government it is argued that Congress, in framing the act of 1913, has shown a definite purpose to clearly distinguish Angora goat's hair, alpaca hair, and their products from wool and its products; that the legislative history of Schedule K gives support to this claim; and hence, that to give full effect to this congressional purpose the classification below must be upheld here.

We first somewhat consider the relevant legislative history.

The tariff acts, prior to that of August 30, 1842, imposed duty upon wool and its products and, so far as we have ascertained, contained no reference whatever to the hair of the camel, goat, or other like animals.

Section 1, paragraphs 1 to 7, of the act of August 30, 1842, assessed duty upon wool, unmanufactured, and upon various manufactures thereof. In paragraph 8 duty was also imposed upon "Thibet, Angora, and all other goat's hair or mohair, unmanufactured," and upon certain mentioned "and all other manufactures of goat's hair or mohair."

The act of July 30, 1848, in Schedule C, made dutiable "manufactures of wool or of which wool shall be the component material of chief value," also "wool unmanufactured;" in Schedule D a different rate of duty was provided for "manufactures of goat's hair or mohair, or of which goat's hair or mohair shall be the component material," and in Schedule E a still different rate was provided for "Angora, Thibet, and other goat's hair or mohair, unmanufactured."

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In the act of March 2, 1861, section 12, paragraph 1, duty was levied "on all wool unmanufactured, and all hair of the alpaca, goat, and other like animals unmanufactured."

In the act of June 30, 1864, section 4, like descriptive terms were employed relating to the raw materials, wool and hair, and various duties were assessed upon the same and fabrics and manufactures thereof. In section 5, paragraph 2, of this act, a clear distinction was made between certain articles made of wool and those made of worsted, mohair, alpaca, or goat's hair.

The act of March 2, 1867, section 1, provided "there shall be levied, collected, and paid on all unmanufactured wool, hair of the alpaca, goat, and other like animals, imported from foreign countries, the duties hereinafter provided." All wools, hair of the alpaca, goat, and other like animals, as aforesaid, shall be divided for the purposes of fixing duties to be charged thereon into three classes, to wit, class 1, clothing wool (under this class wools alone are mentioned); class 2, combing wools (under this division certain wools are specified and also all hair of the alpaca, goat, and other like animals); class 3, carpet wools and other similar wools (under this class certain wools and others of a character like those the subject of former importations are named).

Following this classification, the section provides for distinctive samples of the various kinds of wool or hair embraced therein to be prepared by the direction of the Secretary of the Treasury and deposited in the various customhouses for the purpose of using the same as standards of comparison in determining the classifications last mentioned, and then provides for the duties upon the three classes, the first being upon "wools of the first class," the second being "upon wools of the second class and upon all hair of the alpaca, goat, and other like animals," and the third being "upon wool of the third class," followed by provisions for various duty rates upon products of these raw materials.

These provisions in Schedule K have from time to time been substantially reenacted in all the tariff acts (except as hereinafter mentioned) to and including paragraph 360 of the act of 1909, the first part of which was as follows:

360. All wools, hair of the camel, goat, alpaca, and other like animals shall be divided, for the purpose of fixing the duties to be charged thereon, into the three following classes: * * *.

Then follow provisions in the paragraph for classification thereunder corresponding to and very like those above mentioned of the act of 1867, and it is therein declared that class 2 shall include certain enumerated combing wools and the "hair of the camel, Angora goat, alpaca, and other like animals."

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The exception to the foregoing legislative treatment of wool and hair for duty purposes may be found in the tariff act of 1894, which in paragraph 685 placed in the free list "all wool of the sheep, hair of the camel, goat, alpaca, and other like animals," while paragraph 279 of Schedule K thereof assessed a duty upon certain wool wastes and upon "wool of the sheep, hair of the camel, goat, alpaca, or other like animals in the form of roving, roping, or tops." In succeeding paragraphs of Schedule K provisions were made for duties upon various yarns, cloths, and other manufactures of wool and hair of the camel, goat, alpaca, or other animals.

It may be observed that in the act of 1890 the word "camel" for the first time appears in Schedule K before the word "goat" in describing the raw materials which are the subject of classification thereunder.

All the tariff acts from that of 1864 to 1894, both inclusive, in paragraphs not herein specially referred to, contain in Schedule K provisions for duty rates upon products, fabrics, and articles composed wholly, or in part, or in chief value, as the case may be, of wool, or of the hair of the goat, alpaca, or other like animals.

In the act of 1897 all detailed reference in each paragraph of Schedule K to the raw materials from which the various things thereunder assessed were made or composed was omitted, and such materials were covered by the use of the word "wool." At the end of the schedule paragraph 383 is found, which reads as follows:

383. Whenever in any schedule of this act the word "wool" is used in connection with a manufactured article of which it is a component material, it shall be held to include the wool or hair of the sheep, camel, goat, alpaca, or other animals, whether manufactured by the woolen, worsted, felt, or any other process.

Schedule K in the act of 1909 affords similar treatment of the subject matter thereof, and its closing paragraph (395) is practically identical with that last quoted.

Paragraph 304 of the act of 1913, already quoted, is identical for the purposes of this case with paragraph 395 of the act of 1909, except that the words "goat, alpaca" are omitted and "other animal" is changed to "other like animals."

So far as we are advised, the term "coat linings" first appeared in Schedule K of the act of 1883, wherein it was provided that "women's and children's dress goods, coat linings, Italian cloths, and goods of like description composed in part of wool, worsted, the hair of the alpaca, goat, or other animals" should be subjected to certain specific and ad valorem duties. The quoted provision, in substantially identical language, was reenacted in Schedule K of the acts of 1890 and 1894, but in 1897 the component material was referred to as "wool" in harmony with a like reference to component raw materials in other paragraphs of Schedule K, already pointed out.

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duty upon the hair of the Angora goat and for articles the duty on which was based upon the fact that such hair was a component material thereof, either did not consider it to be wool or, for purposes of greater certainty, thought best to refer specially thereto and treat the same independently as a subject of classification. Upon no other theory can the persistent coupling of the material "wool" with that of the hair of the Angora goat be accounted for. If the word "wool" for the purposes of the duty paragraphs was sufficient to include the "hair of the goat" it was unnecessary to use the latter term.

In the case of United States *v.* Klump (169 U. S., 209, 216, 217) the Supreme Court said, discussing various tariff provisions herein referred to:

> Doubtless wool considered as the sheep's coat might be said to be the sheep's hair, and fleeces of the hair of the Angora goat, the llama, the alpaca, and other like animals, might be called their wool. * * * But the acts of 1890 and 1894, as well as prior tariff acts, distinguished the wool of the sheep from the hair of the camel, goat, and other like animals, as raw materials.

See also Oppenheimer *v.* United States (90 Fed., 796) and Wolff *v.* United States (113 Fed., 1001).

Coming now to the tariff act of 1913, we observe that Schedule K omits the provision for duty upon raw wool, but in paragraph 286 thereof assesses an 8 per cent ad valorem duty upon combed wool or tops and roving or roping made wholly or in part of wool or camel's hair and on other wool and hair which have been advanced in any manner or by any process of manufacture beyond the washed or scoured condition, not specially provided for in this section. This is followed in succeeding paragraphs by provisions for various rates of duty upon divers manufactures of wool with a declaration in paragraph 304, above quoted, that the word "wool" when used in connection with a manufactured article of which it is a component material "shall be held to include wool or hair of the sheep, camel, or other like animals whether manufactured by the woolen, worsted, felt, or any other process." This omission of the words "goat, alpaca," found in the predecessor paragraphs and the other changes in phraseology at once suggest that Congress did not intend the word "wool" when used to describe the component material of any manufactured articles, at least so far as the duty paragraphs are concerned, should be held to include the hair of the Angora goat, alpaca, and other like animals. By no other construction can full force be given to this deliberate omission of the words "goat, alpaca" by Congress, and that it was so intended is entirely obvious from the provisions in paragraphs 305 to 309, both inclusive, which immediately follow.

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Paragraph 305 expressly imposes a duty upon "hair of the Angora goat, alpaca, and other like animals," and the succeeding named paragraphs declare dutiable certain products and fabrics thereof, and also "all manufactures of every description made by any process" wholly or in chief value of such materials.

As one of the facts in the history of this legislation we have examined to some extent the proceedings before the Ways and Means Committee which had charge of the preparation not only of the tariff act of 1909 but of 1913 as well. Briefly referring to those of 1909, it appears that it was represented to the committee that the hair of the Angora goat and its products ought, for the purpose of protecting that industry, to be assessed at a higher rate of duty than wool and its products. Evidence was given tending to show that Angora goat raising in this country mainly existed in Texas, where it had been of commercial importance for then about 12 years. See volume 5, Tariff Hearings, 1908–9 (pp. 5127 *et seq.*). These representations, however, did not result in the requested change in the law.

The matter was again brought to the attention of the committee in its preparation of the tariff act of 1913. See volume 4 of the Tariff Schedules Hearings (pp. 4287–4306). Representatives of producers of Angora goat hair, as well as manufacturers thereof in this country, appeared before the committee asking that the raw material and the manufactured products thereof should be assessed at a higher rate than wool and its products upon the ground that it cost more to produce mohair (Angora goat hair) than wool. A witness told the committee that mohair was nothing like wool except that it grew upon an animal; that it was no more like wool than cotton, and that different products were made from it. The bill as reported from the committee, and which finally became the law we are considering, strongly suggests that these representations bore a desired fruit. The committee in its report accompanying the bill, at page XXIV, in a paragraph entitled "Manufactures of Wool," said that it had given Schedule K very careful study and that the "result has been to make raw wool free of duty," and to give a material reduction in the products and fabrics thereof.

Resurveying now, briefly, the whole situation, these facts stand out in bold relief: Prior to the act of 1913 and during the life of several preceding tariff acts, goat's hair, sometimes specially including the hair of the Angora goat, and at other times not, had been *eo nomine* referred to in connection with wool, accompanied by the declaration that "for the purpose of fixing the duties to be charged thereon" all wools and the hair of the goat should be classified as therein prescribed; that in the later of those acts it was purposely declared, evidently to save tautology, that when wool was referred to in connection with manufactured articles it should be held to

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include the hair of the goat, alpaca, or other animals; that following the recited representations made to the committee having in charge the tariff act of 1913 the hair of the Angora goat, alpaca, and other like animals was for duty purposes at least segregated from wool and declared to be dutiable; that raw wools and the hairs of certain animals were given free entry, and a higher rate of duty was imposed upon the products, fabrics, and manufactures of the hair of the "Angora goat, alpaca, and other like animals" than was imposed therein upon similar articles when composed of wool, as legislatively defined; not only this, but also that Congress took pains to declare that "wool," when used in connection with a manufactured article of which it was a component material, should be held to include not wool or hair of the sheep, camel, goat, alpaca, or other animal, as had been declared in previous acts, but that it should be held to include wool or hair of the sheep, camel, or other like animals, thereby excluding the hair of the Angora goat.

We are now asked to say that, notwithstanding these salient facts, the hair of the Angora goat is nevertheless wool for one of the purposes of paragraph 290. It is obvious, if this be done, that it would clearly be disregarding the mandate of Congress, implied by this change of language from paragraph 395 of the act of 1909 to that of paragraph 304 in the act of 1913, that the hair of the Angora goat should not be so held.

The coat linings in this case being cloth in chief value of Angora goat hair and being also confessedly a manufacture thereof, we think they can not be classified as claimed by the importers.

While it is true, as urged by the importers, that the doctrine that an *eo nomine* description takes precedence over a general one is well established, yet that rule is one of construction only and has been adopted and recognized for the purpose of ascertaining the legislative intent. This rule, however, must be taken with the qualification that if Congress has indicated in a given case its intent that such a rule is not to apply it can not in such case be successfully invoked. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536).

Holding as we do that the clear intent of the Congress in the act of 1913 was, for the purpose of assessing duties upon Angora goat hair, the named products "and all manufactures of every description" wholly or in chief value thereof, to place the same in a class by themselves, it becomes unnecessary to consider any other of the importers' contentions.

The conclusion reached in the case of Crimmins *v.* United States (6 Ct. Cust. Appls., 137; T. D. 35392), cited by the importers, is not conclusive of the issue here. The Angora goat hair waste there under consideration was not, and was not claimed to be, within

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any of the provisions of paragraphs 305 to 309, both inclusive. Moreover, it was said in that case that those paragraphs levied "a duty upon every seemingly possible condition of the hair of the Angora goat," within which characterization the merchandise here confessedly is.

The judgment of the Board of General Appraisers is *affirmed*.

SMITH and MARTIN, Judges, concur in the opinion; MONTGOMERY, Presiding Judge, concurs in the result.

CONCURRING OPINION.

DE VRIES, Judge:

Because to my mind the logic of the opinion herein clearly conflicts with the decision of this court in Crimmins & Pierce *et al. v.* United States (6 Ct. Cust. Appls., 137; T. D. 35392), I am, on careful review, unable to assent herein.

The one decisive issue in that case turned upon the question whether or not paragraph 290 of the tariff act of 1913 included the hair of the Angora goat. It was there said:

> The more seriously controverted question in the case is whether or not the hair of the Angora goat is a "wool" within the meaning and as used in the tariff act of 1913.
>
> * * * * * * *
>
> The conspectus of the legislation of Schedule K of the tariff act of 1913 reveals an apparent legislative classification conducing to the same result. The schedule consists of paragraphs 286 to 310, inclusive. Paragraph 304 therein defines wool as used in connection with any manufactured article of which it is a component material. The paragraph reads:
>
> 304. Whenever in this section the word "wool" is used in connection with a manufactured article of which it is a component material. it shall be held to include wool or hair of the sheep, camel, *or other like animals*, whether manufactured by the woolen, worsted, felt, or any other process.
>
> Aside from the force of the above correlated definitions, which uniformly when read together speak of the wool of "other like animals" and at the same time enumerate and classify as one of the "like animals" to the wool-producing sheep the Angora goat, the inquiry what is meant by "other *like* animals" is not difficult of conception when taken in connection with the purpose of the paragraph. That purpose is, of course, to include within the paragraphs and at the rates of duty therein prescribed all similar materials. The schedule is a classification and enumeration of materials and not animals.

"Like" animals, therefore, does not refer to physical construction or appearance of the animal itself, but to the fleece produced by and from the animal; and, therefore, embraced within the scope of other like animals must be included all animals producing wool or hair like that of the sheep or camel, of which the hair of the Angora goat, alpaca, and others are distinctly and unquestionably of a class.

The opinion submitted, after reviewing the pertinent legislative acts and history, concludes:

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Coming now to the tariff act of 1913 we observe that Schedule K omits the provision for duty upon raw wool, but in paragraph 286 thereof provides for "combed wool or tops and roving or roping made wholly or in part of wool or camel's hair, and on other wool and hair which have been advanced in any manner or by any process of manufacture beyond the washed or scoured condition, not specially provided for." This is followed in succeeding paragraphs by provisions for various rates of duty upon divers manufactures of wool, with a declaration in paragraph 304, above quoted, that the word "wool" when used in connection with a manufactured article of which it is a component material "shall be held to include wool or hair of the sheep, camel, or other like animals, whether manufactured by the woolen, worsted, felt, or any other process." This omission of the words "goat, alpaca" found in the predecessor paragraph and the other changes in phraseology at once suggests that for duty purposes the word "wool" as used in Schedule K does not include the hair of the Angora goat, alpaca, and other like animals. By no other construction can full force be given to this deliberate congressional omission, and that it was so intended is entirely obvious from the provisions in paragraphs 305 to 309, both inclusive, which immediately follow.

On the merits I am quite ready to concede and assert that the Congress has from time immemorial and in this act observed as distinct tariff classifications the wool of the sheep and the hair of the camel, alpaca, etc. But it does not follow that because it has so regarded that paragraph 304 defining the word "wool" as used in paragraph 290 does not by its express terms include both classes of imports. That observance did not divest Congress of the power to declare, as it has in paragraph 290, that the use of the word "wool" should include both.

It was equally within the power of Congress, by paragraphs 305 to 309, inclusive, to legislatively segregate from the materials and articles declared in paragraph 304 to be included in the term "wool" by confining the legislation in these paragraphs to that class of wools as defined in paragraph 304, more commonly known as the "hair" of the Angora goat, alpaca, and other like (hair) animals, thereby intending to construe and constitute said paragraphs 305 to 309 the exclusive legislative code more specifically providing duties upon the raw materials and manufactures of those wools which are "hairs of the Angora goat, alpaca, and animals of like hairs."

In the earlier decision the court adopted the view that the force of the words of "other *like* animals" in that paragraph included therewithin the hair of the alpaca. While the opinion before us holds that only "wool" of the "sheep" is included in paragraph 304, the very terms of the paragraph are extended by Congress not only to the "wool" of the sheep but to the "wool *or hair* of the sheep, *camel*, or other *like* animals." While Congress dropped from the paragraph as it appeared in the act of 1909 part of its lengthy enumeration of hair-growing animals, "goat" and "alpaca," nevertheless it inserted the word "like," thereby in shorter form, but expressly predicating the paragraph not only of the "wool of the sheep" but also of the "*hair* of the *camel*, and other *like* animals."

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From my limited point of view the purpose of Congress in this schedule in its differentiation between the wool of the sheep and the hair of the Angora goat, alpaca, and like animals for dutiable purposes is unmistakable. It seems to me that from paragraph 286 to 304, inclusive, Congress legislated with reference to manufactures, as stated in paragraph 304, including those made of the wool of the sheep and the hair of the camel, Angora goat, alpaca, and other like animals. In paragraphs 305 to 308, however, Congress differentiated for dutiable purposes both wool from hair as raw materials and manufactures thereof, confining the legislation expressly to the hair of the Angora goat and alpaca. These four paragraphs, to my mind, are intended to be complete and exhaustive as to the subject matter of the hair of the Angora goat and alpaca and manufactures thereof. Bearing in mind that while Congress ever has distinguished between these as tariff subjects when it came to placing duty thereupon, Congress was careful in paragraph 304 to include both the wool of the sheep and the hair of the camel and other like animals. When, however, it proceeded in paragraphs 305, 306, 307, and 308, it confined itself to the differentiated subjects "hair of the Angora goat, alpaca, and other like animals." What like animals? Not like animals to the sheep, but like animals to the Angora goat and alpaca alone. In paragraph 304, however, it relates the legislation to the wool of the sheep and the hair of the camel and other like animals to all of these. While the result is the same, I think the differentiation more clearly follows the purpose of Congress and does not destroy the relation of the whole schedule to other paragraphs of the tariff act.

I concur in the conclusion.

(T. D. 36511.)

Panama Canal act—Ships' equipment.

UNITED STATES *v.* OUTERBRIDGE & CO. (No. 1607).

1. CONSTRUCTION—SUBSECTION 5 OF PARAGRAPH J OF SECTION 4, TARIFF ACT OF 1913.

   The obvious intent of subsection 5 of paragraph J of section 4, tariff act of 1913, was to favor the shipping industry of this country, and whatever of ambiguity may be found in it must be resolved so as to give effect to that intention. The interchangeable use in the subsection of the words "materials" and "articles" denies to it uniform expression unless "articles" be construed to mean such articles as are materials used in further manufacture. To hold that a completed marine engine is "materials" and can be imported free of duty would defeat the obvious intent of the subsection.

2. IMPORTATION OF ALL PARTS IS IMPORTATION OF WHOLE.

   The importation in one shipment of all the essential parts of a marine engine, though such parts be unassembled, is an importation of a marine engine.

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3. MARINE ENGINE—NONESSENTIAL PARTS.

All the parts of a marine engine except bushes, filter box, connecting pipe from receiver to condenser, and bolts to fasten it to its foundation constitute a complete marine engine.

4. MARINE ENGINE, HOW DUTIABLE.

A marine engine is not admissible free of duty under subsection 5 of paragraph J of section 4, tariff act of 1913, as shipbuilding materials or articles, but is dutiable under paragraph 165 as a steam engine.

United States Court of Customs Appeals, May 31, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38248.

[Modified.]

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Gerry & Wakefield for appellees.

[Oral argument February 11, 1916, by Mr. Wakefield and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

In December, 1912, the Downey Shipyard & Marine Co., of Brooklyn, N. Y., contracted with the Bermuda Transportation Co., of Bermuda, to build for them a steel vessel fully equipped with machinery and general outfit. The boat was constructed at the Downey Shipyard & Marine Co.'s yards at Brooklyn, N. Y., and was named the *Princess*. The Bermuda Transportation Co. is a corporation organized under the laws of Bermuda. The merchandise here in question was ordered by the building company from Plenty & Son (Ltd.), Newbury, England, and duly imported at the port of New York and made a part of the said boat. A statement of the items is in the record. (Record, p. 48.) While there are numerous questions in this appeal as to compliance with the regulations, the repeal of statutes *in pari materia*, and of evidence, in the view taken of the case by the court these questions are subsidiary to and decided by the main issue, which is, whether or not the imported merchandise falls within the provisions of subsection 5 of paragraph J of section 4 of the act of October 3, 1913, reading:

J (subsection 5). That all materials of foreign production which may be necessary for the construction of naval vessels or other vessels of the United States, vessels built in the United States for foreign account and ownership, or for the purpose of being employed in the foreign or domestic trade, and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment, may be imported in bond under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purposes no duties shall be paid thereon.

The relevancy of subsection 6 of paragraph J of section 4 of the act of October 3, 1913, is also discussed in the briefs. Inasmuch, however, as the record clearly shows that the *Princess* was owned

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and used by a foreign corporation and was not owned or registered under the laws of the United States, the terms of that subsection exclude its relevancy.

Owing to some apparent confusion as to whether or not said subsection 5 repealed section 5 of the act of August 24, 1912, the board predicated its decision upon that paragraph of the act of 1912, and held the imported merchandise entitled to free entry thereunder.

It seems agreed by all parties herein that if the imported merchandise is entitled to free entry, such must be accorded under the provisions of subsection 5 of paragraph J of section 4 of the act of October 3, 1913, *supra*.

It might be said generally that the invoice included various items some of which entered into the construction of a triple-expansion marine engine and some of which, though ordinarily included within the engine room of a ship, did not enter into the construction of the engine.

The invoice, dated London, England, October 16, 1913, described the importation as follows:

* * * * * * *

One set $\frac{12'', 20'', 32''}{18''}$ triple-expansion marine engines, with air and circulating pumps, steam reversing gear, *all complete*, and packed in five (cgs.) wooden cases.

* * * * * * *

In an affidavit by the master builder, dated at New York, N. Y., November 17, 1913, the following was declared:

* * * * * * *

Description of articles: (1) Triple-expansion steam engine *and all its parts*, as specified in shipping specifications hereto attached.

* * * * * * *

The collector returned that "the within-described merchandise consists of *completed machinery* or mechanism for the propulsion of vessels." Accordingly duty was assessed by the collector upon the entire importation as manufactures of metal under the provisions of paragraph 167 of the said act. Upon protest the Board of General Appraisers reversed the decision of the collector, concluding as follows:

There remains but one question for decision, and that is: Are the articles which are the subject of this protest such as come within the purview of the Panama Canal act? It is contended by the Assistant Attorney General that the material furnished constituted a complete engine. This we think the testimony does not justify. The articles in question we find are such as come within the purview of that law. See Conkey & Co.'s case, G. A. 7668 (T. D. 35086). The protest is sustained and the collector directed to liquidate the entry accordingly.

Subsection 5 of the act of October 3, 1913, *supra*, is not clear and unambiguous. It will be noted that while it provides for "materials" necessary for the building of their machinery, it then provides for "articles" necessary for the outfit and equipment; later, however,

providing that such free entry should only be accorded on "proof th such *materials* have been used," etc. This alternative use of tl words "articles" and "materials" denies to the paragraph unifor expression unless it be held that the "articles" therein provided f shall be confined to such articles as are materials used in furth manufacture. This distinction was observed in Tide Water Oil C *v.* United States (171 U. S., 210, 216), wherein the court said:

> Ordinarily, the article so manufactured takes a different form, or at least subserv a different purpose from the original materials; and usually it is given a different nam Raw materials may be and often are subjected to successive processes of man facture, each one of which is complete in itself, but several of which may be requir to make the final product. Thus, logs are first manufactured into boards, plank joists, scantlings, etc., and then by entirely different processes are fashioned in boxes, furniture, doors, window sashes, trimmings, and the thousand and one articl manufactured wholly or in part of wood. The steel spring of a watch is made ul mately from iron ore, but by a large number of processes or transformations, ea successive step in which is a distinct process of manufacture, and for which the arti so manufactured receives a different name.
>
> The material of which each manufacture is formed * * * is not necessarily t original raw material, * * * but the product of a prior manufacture, the finish product of one manufacture thus becoming the material of the next in rank.

And in United States *v.* Richter (2 Ct. Cust. Appls., 167, 169; T. I 31680), wherein this court observed:

> Ordinarily a manufactured article takes a different form, or at least subserve purpose different from the original materials out of which it is made, and usually takes a different name. * * * That does not mean, however, that its usefuln as a material has necessarily ended and that as a manufacture it can not serve purpose of material for some other manufacture.

The court is clearly of the opinion, however, that whatever may the difficulties of prescribing an exact line of differentiation betwe materials, articles, and parts as to various possible importations unc the paragraph, this case is ruled by certain well-established a clearly pertinent rules of construction.

Cardinally the court must observe and so construe a statute as v *most effectually* carry out the obvious intent of Congress. T obvious intent of Congress herein was to favor the shipbuildi industry of this country by encouraging and giving aid and spec concessions under its import laws to that industry. If the co should put the construction upon this paragraph that all *comple* parts of a ship could be imported under this paragraph, it remain only to assemble them in this country, obviously violence would done the intention of Congress and our shipyards would beco nothing more than assembling plants rather than manufacturing shipbuilding institutions. The point may be aptly illustrated by conduct of the great automobile industry of the country, wherein various parts are manufactured at the home plant and shipped in the various States to assembling plants for business reasons. If

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applied that principle of construction to this paragraph all those classes of skilled labor employed in the construction of a ship would not be afforded employment, but there would be employed only those men who could assemble the various parts of a ship. Applied precisely to the question herein, if a completed marine engine can be imported free of duty under this paragraph it would seem to logically follow that a completed hull of a ship could be constructed in a foreign country and imported. The court can not attribute that purpose to Congress which would thus result in destroying rather than benefiting the shipbuilding industry of the country.

Without further attempt at definition or limitation of the terms of the paragraph, it will suffice for this case to decide the question whether or not a triple-expansion marine engine, ordered and imported as hereinbefore stated, was a complete engine. The invoice and affidavit so declared. The collector seems to have so found, at least the collector so held the merchandise dutiable. The Board of General Appraisers took the opposite view. The question is therefore presented for decision by the court, Was there sufficient evidence in the record to justify the Board of General Appraisers in overruling the decision of the collector? We think not. This question turns upon the single point whether or not the items in the invoice when assembled made a complete triple-expansion marine engine. The theory of the witnesses upon behalf of the importers was that every item of the invoice which went into the engine room was a necessary part of the engine. They went so far as to declare that the pumps for pumping water out of the hold, the propeller shaft which was driven by the engine, the propeller itself, were necessary parts of the engine, and that there being absent from the invoice certain connections between the engine and these remote and subsidiary items, therefore the engine itself was not a complete engine. We think the statement of that position sufficient for its refutal.

There were one or two items the subject of controversy which might present a debatable question. They were, first, that there was no connecting pipe from the low-pressure receiver to the condenser. This is a copper pipe fastened with steel flanges, which were claimed not to be included in the invoice. Secondly, there was no filter box. That article seems to receive water from the pump and distribute it to the boiler—feeds the water to the boiler. It seems to be conceded that the boiler of a marine engine is no part of the engine itself. Wherefore the filter box is not a necessary part. The other items in controversy were such as bolts to fasten the engine to its foundation and to the shafting. The final conclusion of the machinist who installed the items, who was in the employ of the construction company, was in these words:

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General Appraiser HAY. Do not speculate; tell us what it was sent over here minus of.—A. There were no bushes, there was no filter box, there is no connecting pipe from the receiver to the condenser.

Q. Is that all?—A. And the bolts to fasten it down to its foundation.

Q. Is that all?—A. Also the bolts to fasten it to the shafts.

Q. Aside from that was it complete?—A. So far as I recollect, yes.

The invoice was for $7,819.74. It consisted of a great number of items. While there is no definite testimony in the record as to the actual cost of these enumerated items the record makes it perfectly obvious that they were unsubstantial and insignificant. Moreover, they do not seem to be an integral part of the engine itself. The testimony makes it perfectly clear that all these items are such as are necessary in adjusting the engine or its parts to its place of final operation, required to be long or short, in one position or another, necessary or unnecessary, according to the final adjustment. The court is, therefore, of the opinion that they were not substantial or even significant parts, if they were parts at all of the engine itself.

While the various parts of the engine were not assembled they were included in the importation, they therefore constituted an entirety and a complete engine. The case in this respect is well within the decisions. It was held in United States *v.* Schoverling (146 U. S., 76) that where parts of shotguns were imported on different vessels by different importers, though of the same firm, that they were not dutiable as entireties, completed shotguns, but according to the material of their composition. It was held, and the point seems settled, in United States *v.* Irwin *et al.* (78 Fed., 799), and in United States *v.* Auto Import Co. (168 Fed., 242), that where several parts of an entirety are included in the same importation to the same importers which when put together constitute a completed article they are dutiable as such article.

The court is of the opinion that each and all of the necessary parts of a completed triple-expansion marine engine were included in this invoice, and that as such a complete engine, which all men know to be the most important machine in the construction and operation of a ship, were herein imported.

It would seem sufficient for the purposes of this case, whatever interpretation may be given the words "materials" or "articles" in other parts of the paragraph, to point out that free entry in such cases as this is accorded by the statute to "such *materials* for the *building* of their machinery." In this instance not the materials or parts necessary for the *building* of this machine but the complete machine itself was imported, and therefore not entitled to free entry.

The claim is made in the protest that if not entitled to free entry under the provisions of subsection 5 of the act of October 3, 1913, *supra*, the importation is dutiable under paragraph 165 of the act for

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"all steam engines." The court is of the opinion that that point is well taken in this case and that it should be so classified. In that particular and to that extent the decision of the board is reversed. The Government makes no contention as to other items and for that reason the decision of the board, except as herein modified, is affirmed.

Modified.

(T. D. 36512.)

Machine grinders—Machine tools.

UNITED STATES *v.* LEIGH & BUTLER (NOS. 1672 AND 1674).

1. CONSTRUCTION—PARAGRAPH 165, TARIFF ACT OF 1913.

Paragraph 165, tariff act of 1913, though providing for machine tools, does not provide for parts of them. Norma Co. *v.* United States (6 Ct. Cust. Appls., 89; T. D. 35338.)

2. ATTACHMENTS FOR CARDING MACHINES TO GRIND THE TEETH OF THE CARD CLOTHING, HOW DUTIABLE.

An attachment called "Dronsfield's patent traverse wheel grinder," designed to fit on a carding machine by means of bearings provided for it on the carding machine and to sharpen the teeth of the card clothing of the carding machine by the incidental use of the power which operates the carding machine, is not a machine, but a part of one. It is not dutiable as a machine tool under paragraph 165, tariff act of 1913, but as a manufacture of metal not specially provided for under paragraph 167.

United States Court of Customs Appeals, June 5, 1916.

APPEAL from Board of United States General Appraisers, Abstracts 38981 and 39308.

[Reversed.]

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

Comstock & Washburn (*Albert H. Washburn* and *George J. Puckhafer* of counsel) for appellees.

[Oral argument May 16, 1916, by Mr. Hanson and Mr. Washburn.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in this case is called "Dronsfield's patent traverse wheel grinder" and was imported under the tariff act of 1913.

The collector classified the grinder as a manufacture of metal not specially provided for and accordingly assessed duty thereon at the rate of 20 per cent ad valorem under paragraph 167 of the act.

The importers protested against the assessment, claiming duty upon the article at the rate of 15 per cent ad valorem as a "machine tool" under paragraph 165.

The protest was sustained upon evidence by the Board of General Appraisers, from which decision the Government now appeals.

The following is a copy of the competing paragraphs just cited:

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165. All steam engines, steam locomotives, printing presses, and machine tools, 15 per centum ad valorem; embroidering machines, and lace-making machines, including machines for making lace curtains, nets, or nettings, 25 per centum ad valorem; machine tools as used in this paragraph shall be held to mean any machine operated by other than hand power which employs a tool for working on metal.

167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

It will be seen at once that the sole question in the case is whether the metal manufacture at bar is a "machine tool." If it be entitled to that name it should, of course, be assessed under the *eo nomine* provision for machine tools in paragraph 165, *supra*. On the other hand, if the article be not a machine tool it should plainly be assessed as a manufacture of metal not specially provided for under paragraph 167, *supra*.

An illustration of the article in question is shown in the catalogue of the manufacturers, which is filed as Exhibit 1 of the record, and a very full description thereof is given by the witnesses. The grinder has the appearance of a metal roller about 3½ inches in diameter and 5 or 6 feet in length, with an emery wheel attached to it. It is used as an instrument for sharpening the card clothing of carding machines. This so-called card clothing consists of strips of leather fastened upon the metal cylinders of a carding machine with rows of upright wire teeth upon them. When the cylinders rotate the wire teeth "card" the fiber which is fed to them. The teeth must be sharpened at intervals in order to be kept efficient, and the article now in question is designed to perform that function.

Upon a closer examination the article is found to consist first of a steel shaft having a double worm thread cut lengthwise upon it. Over this shaft is fitted a steel tube upon which is mounted the traverse emery wheel already mentioned. When in use the article is placed in bearings which are specially prepared for it upon a carding machine, and is rotated in connection with the machine by means of a belt connected either directly or indirectly with the pulleys which furnish power to the carding machine itself. When the grinder rotates the emery wheel is automatically moved backward and forward lengthwise along the tube by means of a dog which travels in the thread above mentioned. The emery wheel is thus brought into reciprocal contact with the wire teeth of the card clothing and sharpens them.

It appears from the testimony that in the construction of carding machines the card clothing is permanently attached to the cylinder which carries it. These cylinders are generally very heavy, weighing sometimes from 1,500 to 1,900 pounds, and it would be very difficult

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to remove them from the machines without damaging the cloth. The usefulness of the present article is therefore apparent, since it may be attached directly to a carding machine and be rotated reciprocally with the cylinders thereof. This requires of course that the carding machines be constructed with suitable bearings for the operation of the grinders. Such a grinder is removable, and may be transferred from one carding machine to another, thus serving a number of machines when similarly constructed.

Grinders substantially similar to these are also used by manufacturers of card clothing for sharpening the wire teeth thereof upon carding cylinders before they are placed in position in carding machines. For this use the grinders are mounted upon independent frames, whereas, as already stated, when the grinders are used for sharpening the card clothing upon cylinders already assembled in carding machines they have no separate or independent frames, but rest simply upon bearings which are prepared upon the frames of the carding machines themselves.

As has been stated, the sole question in the present case is whether the article above described is a "machine tool" within the meaning of paragraph 165, above copied. That paragraph contains within itself a legislative definition of the term in question, namely, that machine tools as intended by the paragraph shall be held to mean "any machine operated by other than hand power which employs a tool for working on metal."

The importers contend that the present article comes within the terms of the foregoing definition, claiming, first, that it is a machine; second, that it is operated by other than hand power; and, third, that it employs a tool for working on metal. The Government, however, contends that the article as imported is not a machine, but at best only part of a machine, and therefore that it does not respond to the first requirement of the statutory definition. It will be noted that paragraph 165, *supra*, makes no provision for "parts" of machine tools. Norma Co. *v.* United States (6 Ct. Cust. Appls., 89; T. D. 35338). In support of its contention the Government claims that the imported article can not be operated or put to use without a frame or other suitable support, and therefore that it does not become an actual machine until it is assembled together with its necessary supports. The Government concedes for the purposes of this case that if the article in question were complete with its frame and ready to be put into operation by the application of proper power it would be classifiable under the provision for machine tools. The present question, therefore, reduces itself to this: Is the article at bar a machine or only part of a machine? For concededly it can not be a machine tool under the definition contained in the governing paragraph unless, first, it be itself a machine. This aspect of the

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case is very fully presented by the concurring opinion of my brother Barber.

In coming to answer this question we must observe that the present article plainly can not be put into operation as a sharpening machine by the application of power to it until it shall first be assembled with some other article or articles. It must certainly have a frame to support it and suitable bearings within which to rotate. If the grinder were intended for use in an independent machine for sharpening card clothing outside of carding machines it would of course be necessary after importation to provide it with a separate frame. In such case neither the grinder nor the frame, if taken alone, would constitute a complete machine. Each article would constitute but part of a machine.

On the other hand, when a grinder is designed to be mounted upon a carding machine it requires, of course, no separate or independent frame; nevertheless the frame of the carding machine with its specially prepared bearings becomes virtually the frame of the grinder also. It should be noted that the bearings which are prepared for the grinder upon the frame of a carding machine serve no purpose in relation to the carding processes of the machine, but are designed exclusively as a support for the grinder.

It thus appears that the present article if taken alone is incapable of having power applied to it, and is incapable of performing its function, and that before it can be put into operation by the application of power it must first have other essential parts added to it, not simply for the purpose of bringing it into contact with the material upon which it may operate, but for the purpose of furnishing it with the necessary frame and bearings without which it can not operate at all.

Whatever, therefore, may be the dictionary definitions of the word "machine" when taken at large, it is evident in the present case that the actual work which is to be accomplished by means of the imported grinder can not be performed by it alone, but must be performed by means of this article when assembled together with other articles, all of which are equally necessary parts of a distinct entirety. This entirety is the machine in contemplation, and the present grinder is but a part of it. In this particular, therefore, the article in question fails to respond to the legislative definition of a machine tool, since it does not itself possess the character of a machine.

The decision of the board sustaining the importers' protest is therefore *reversed*.

CONCURRING OPINION.

BARBER, Judge:

I concur in the foregoing opinion of my brother Martin and think that in addition thereto what follows is worthy of mention.

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The term "machine tools" first appeared in paragraph 197 of the act of 1909, and was not in that act defined. Its meaning was first passed upon by this court in a carefully considered opinion in Myers *v.* United States (1 Ct. Cust. Appls., 226; T. D. 31260). The subject was reviewed in Sears *v.* United States (2 *Id.*, 329; T. D. 32055), and it was held there that a machine tool connoted the application of power other than that of the operator. In United States *v.* Georgia Pulp & Paper Manufacturing Co. (3 *Id.*, 410; T. D. 32998) it was said "that a machine working metal and capable of producing machines or parts thereof in a relatively finished condition would be a machine tool within the commercial meaning of that term." United States *v.* Knauth (3 *Id.*, 419; T. D. 32999), Surgical Supply Importing Co. *v.* United States (3 *Id.*, 429; T. D. 33001), Knauth *v.* United States (3 *Id.*, 435; T. D. 33003), United States *v.* Bernard, Judae & Co. (3 *Id.*, 503; T. D. 33164), and Gallagher & Ascher *v.* United States (3 *Id.*, 520; T. D. 33168) also involved the question of what were machine tools. Neuman & Schwiers Co. *v.* United States (4 *Id.*, 64; T. D. 33310) and Favor, Ruhl Co. *v.* United States (4 *Id.*, 292; T. D. 33513) involved the same question.

In each case the article under consideration was ready for use as imported, and to operate it the application of *power only* was necessary.

From these cases the only rule of construction I can deduce is that the term "machine tool" in the common understanding was thought to mean a completed machine to which power other than that of the operator could be applied and that usually, though not always, such machines were designed to work upon metal. All these cases arose before the enactment of paragraph 165.

In that paragraph Congress defines the term "machine tools" to mean "any machine operated by other than hand power which employs a tool for working on metal," thereby limiting it to metal-working machines, which this court had not done, although it had suggested that commercially that characteristic was understood. It never had, however, been suggested or considered so far as can be concluded from the cases cited *supra* that a machine tool was anything less than a completed mechanism ready to perform its functions whenever power was applied thereto.

The language of the statutory definition "any *machine* * * * which employs a tool" necessarily implies that the machine is finished—ready to operate when the power is applied—and capable of performing its functions when the *tool* is supplied thereto. This traverse wheel grinder is at the most a tool or a part of a machine to be used in a machine tool. The fact that it contains a double worm thread and an automatic device which compels an emery wheel to travel back and forth upon a steel shaft does not elevate

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it to the dignity of a machine. It is simply a mechanical device which can not function and to which power can not be applied until it is placed upon and connected with, *i. e.*, made a part of the entirety, the machine tool. Any other finding I think is at variance with the conclusions reached by this court in the cases cited, tends to defeat the congressional intent, and is likely to cause uncertainty and confusion in the customs administration. Paragraph 165 includes with "machine tools" only such other machines as are manifestly ready to operate when power is applied. The rule of *ejusdem generis* requires machine tools to be equally complete.

DISSENTING OPINION.

Dissenting opinion by SMITH, Judge, with whom DE VRIES, Judge, concurs:

We regret that we find ourselves unable to agree with the majority opinion in this case. The particular kind of Dronsfield patent steel grinder involved in the appeal is a machine in the sense that it has reciprocating parts which, cooperating together, produce the mechanical result for which the grinder was designed. As the grinder is a machine designed for sharpening the card-clothing of carding machines, it is a machine tool within the meaning of paragraph 165, unless it be held to be incomplete because the supports upon which it is to be mounted are attached to the carding machine and not to the grinder and are not imported with it. The grinders are substitutes for a class of articles known as strickels, a kind of hand tool, and in the condition in which they are imported they are ready for use and do not require the application to them of any manufacturing processes or the addition of other parts in order to enable them to perform the function for which they were made. That they may grind the card-clothing it suffices to put them on the supports provided for them on the carding machine and then apply power to the pulley which is fitted to the grinder. The article in question, being ready for use, must be regarded, we think, as complete, and therefore dutiable as claimed by the importers.

(T. D. 36513.)

Railway mail car.

UNITED STATES *v.* DULUTH, WINNIPEG & PACIFIC RAILWAY CO. (No. 1687).

1. INTERNATIONAL RAILWAY CAR.

An international railway may bring its cars into the United States free of duty in the due course of international and incidental local traffic only, but not to engage for any period in domestic traffic only.

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2. RAILWAY CAR TEMPORARILY ENGAGED IN DOMESTIC TRAFFIC.

A railway car brought into the United States and used in domestic traffic only is not saved from a dutiable status by its owner's intention to return it ultimately to international traffic.

3. CHARACTER OF CAR NOT DETERMINED BY CHARACTER OF FREIGHT.

A railway car which travels only within the United States does not acquire an international character by carrying international mail.

4. EVIDENCE—SUFFICIENCY OF.

A claim in a protest that an article is in chief value of wood, against the collector's finding that it is in chief value of metal, is sustained in this case by the uncontradicted testimony of a competent witness, taken with the appraiser's advisory classification as in chief value of wood, and the fact that the Board of General Appraisers made no finding upon that issue.

United States Court of Customs Appeals, May 31, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7862 (T. D. 36190).

[Reversed.]

Bert Hanson, Assistant Attorney General (*John J. Mulvaney* and *Henry M. Farrell*, special attorneys, of counsel), for the United States.

A. McC. Washburn (*J. L. Washburn*, *W. D. Bailey*, *Oscar Mitchell*, and *A. C. Gillette* of counsel) for appellee.

[Oral argument May 18, 1916, by Mr. Hanson and Mr. Washburn.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

This case calls into question the action of the collector at the port of Duluth in assessing duty upon a certain railway car, which he claimed had been imported from Canada into this country by the appellee.

The collector classified the car as a manufacture composed in chief value of metal within the provisions of paragraph 167 of the tariff act of 1913, and accordingly assessed duty thereon at the rate of 20 per cent ad valorem.

The appellee protested against the assessment, claiming that the car in question had not been imported into this country in a tariff sense, and had never become liable to any duty as an importation. As a subordinate and secondary claim the appellee further protested that in any event the car would not be dutiable as a manufacture composed in chief value of metal under paragraph 167, *supra*, since its component material of chief value was not metal, but wood.

The protest was submitted upon testimony to the Board of General Appraisers, and was sustained upon the first claim (Judge Waite dissenting), the board holding upon the evidence that the car in question had never become an importation in the tariff sense, nor liable to any assessment of duty. In this view of the case the board did not find it necessary to pass upon the secondary claim presented by the protest.

The Government now appeals.

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The facts in the case appear almost without dispute in the record. The appellee is the Duluth, Winnipeg & Pacific Railway Co. and is a subsidiary of the Canadian Northern Railway system. It connects Winnipeg on the main line with Duluth, Minn., via Fort Francis, Ontario. The railroad between Fort Francis and Duluth, about 171 miles in length, lies almost entirely within the State of Minnesota, the distance between Fort Francis and the international boundary line being only a few miles.

The car now in question is a combination baggage and mail car, which was constructed in Canada in the year 1911. It was first put in service upon the Canadian main line alone, this continuing for about one year. Thereupon it was placed in service between Winnipeg and Duluth, and it continued upon that route for about two years. When in this service the car would be loaded at one terminal, say Duluth, and would be run in train to Fort Francis, where it would be dropped. It would there be "picked up" by a Canadian Northern train and taken to the other terminal, Winnipeg. This operation would be reversed upon the return schedule. During the several years that the car was thus operated it was, of course, not assessed with duty by the collector, nor was it then claimed that the car had assumed the character of an importation when it entered the United States upon its regular international runs.

However, in the month of November, 1914, the railway company, owing to traffic conditions, changed the schedule for the present car, and operated it only between the city of Duluth and the station of Cusson, which is a station upon the company's railroad situate in Minnesota, about 123 miles north of Duluth and about 45 miles south of the international boundary. From the month of November, 1914, therefore, the present car was engaged in ordinary intrastate train service as a combination baggage and mail car upon appellee's railroad between Duluth and Cusson, carrying both local and through mail and baggage, in schedule connection with the other trains of the company, some of which continued to cover the entire distance between Duluth and Winnipeg. This course of operation continued until July 13, 1915, a period of about eight months, when the collector of the port of Duluth took cognizance of the matter and held that the car had been imported into this country by force of the foregoing facts, and accordingly assessed duty upon it. The car continued in the intrastate service last above indicated until the following November, when it was restored to the through service between Duluth and Winnipeg, after an absence from Canada of about one year. It may fairly be concluded from the evidence that when the railway company changed its schedule in November, 1914, and restricted the operation of the present car to an intrastate route, it did not intend to appropriate the car permanently to intrastate service, but expected to return it ultimately to its former inter-

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national route. This intention of the company, however, was plainly indefinite as to time and details, all of which were contingent upon future business conditions. That is to say, it may fairly be inferred from the evidence that the railroad company intended to restore the car to an international run whenever traffic conditions required it, and it expected that sooner or later such conditions would arise.

It should also be mentioned that on July 13, 1915, the railway company made a formal customs entry of the car with the collector, whereupon the assessment of duty now in question was made by the collector. The duty was paid as assessed, and thereupon on August 3, 1915, the company's protest was filed in the terms above set out.

The present question therefore is whether upon the foregoing facts the board's decision sustaining the protest and holding the car in question to be nondutiable, should or should not be affirmed.

It is conceded by the appellee that railroad cars may be brought into the United States "under such circumstances as to constitute importation." This proposition is certainly correct, for the tariff act of 1913 provides that duty shall be paid "upon all articles when imported from any foreign country into the United States." Railway cars when imported into this country have been subject to duty under various tariff revisions, and locomotives are made dutiable *eo nomine* under paragraph 165 of the tariff act of 1913. But the appellee contends that the present car, when it was brought into this country, was engaged in international traffic, and therefore entered as a means or vehicle of importation and not as an import itself. Accordingly the appellee denies that the car ever was "imported" in the customs sense, or that it ever became liable to the payment of any tariff duties in this country. This raises the real question in the case, namely, whether under the rules relating to international traffic the present car was entitled to come into this country and remain here in the manner and to the extent above described without acquiring the character of an importation and becoming liable as such to the assessment of tariff duties.

It is well known that certain rights have long been enjoyed in practice by international railway companies in bringing their trains into this country from Canada and Mexico, when engaged in international traffic, without the payment of customs duties upon their locomotives or cars while engaged in that service. These rights seem to have arisen from the very necessities of the case and to be due to international comity, and yet so far as we can find they have never been expressly provided for nor their terms and conditions defined by any treaty, statute, or convention of any kind. The statutes, however, have long provided that cars containing importations, in order to avoid inspection at the first port of arrival, may be sealed and closed by duly authorized officers previous to their importation into the United States, and that thereupon "the same may proceed to their

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of its destination as named in the manifest of its freight and be there inspected. Penalties are provided in case the car is opened before reaching its port of destination. (Revised Statutes, sec. 3102.) These provisions in a measure imply that the car within which such importations are thus sealed may cross the international boundary and proceed directly to its port of destination without becoming itself an importation or paying any customs duties as such. These provisions therefore sanction to that extent the right of cars loaded with importations to proceed across the international boundary to their port of destination without assessment of duty upon the car itself, without, however, defining the extent of that right in general or prescribing the limitations under which it must be exercised. For many years, however, this has been the subject of regulation by the Treasury Department, and a review of some of these regulations is in point in this case.

In the year 1869 the department issued a ruling that "railroad cars built in Canada and brought into the United States to be used only in the through business between Canada and the United States, and not intended for local but international use, are (when brought into the country in and for such employment) not "imported" and are, therefore, not chargeable with duty." (T. D. 347.)

In the year 1870 the department issued a ruling in enlargement of the foregoing regulation which "expressly stated that such cars should not be for local traffic in Canada, but for international use." The department continues:

> An extension of the above privilege was requested by certain parties to enable such cars to take on local freight in Canada, and thereby save the expense of running empty cars from the East to the West. The application was granted, and collectors will therefore allow cars used on such through route, whether empty or laden with local or other freights, to pass without payment of duty. * * * (T. D. 648.)

In the year 1882 the Secretary of the Treasury ruled as follows:

> Under date of April 27, 1870, by letter to the collector of customs at Port Huron, and of December 3, 1878, in letter to your office, this department adopted the principle that cars running between Canada and the United States for international traffic, which might even be used to some extent for local traffic, were not to be regarded as importations liable to duty. This position was taken without reference to the question whether the cars were built in Canada or in the United States.
>
> Upon the principle adopted, that the cars, when completely furnished in the first instance, are not liable to duty, I see no reason why the expense of refurnishing such cars, under the circumstances stated, should make the materials used in such refurnishing liable to customs duties, and this department will interpose no objection to the passage of such cars free of duty when used in traffic of the character mentioned.
>
> You are authorized to furnish the agent of the Pullman Car Co. with a copy hereof.
>
> Very respectfully,
>
> CHAS. J. FOLGER, *Secretary*.
>
> COLLECTOR OF CUSTOMS, *Burlington, Vt.*
>
> (T. D. 5093.)

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In the year 1889 the Secretary of the Treasury issued instructions which are so important in the present controversy that they are here quoted in full.

(T. D. 9549.)

TREASURY DEPARTMENT, *August 3, 1889.*

SIR: The department has fully considered the question submitted by you of the dutiable or nondutiable character of foreign-built railway cars coming into the United States from Canada laden, or for the purpose of being laden, with mails, passengers, baggage, express matter, or freight.

The records of this department show that railway cars engaged in the so-called transit trade partly over the territory of the United States and partly over the territory of Canada have never been regarded as importations subject to duty, but simply as vehicles of transportation for the conducting of an established and legalized traffic. In letters from this department to the president of the New York Central Railroad Co., February 2, 1869, to the collector at Port Huron, April 27, 1870, and to the collector at Burlington, December 3, 1878, and January 9, 1882, it was held that such practice was not obnoxious to the revenue laws of the United States and did not subject foreign-built cars running in the transit trade between Canada and the United States to duty, since section 3102, Revised Statutes, authorizes foreign railway cars laden with importations to enter the United States and proceed to destination, and section 3006, Revised Statutes, authorizes the cars of both countries to engage in international traffic and the merchandise so carried to be treated as "if the transportation had taken place entirely within the limits of the United States." The principle so adopted and announced has remained in force for more than 20 years, and does not seem to have been impeached or questioned in or by any statute or other congressional action, or any judicial decision or treaty, or any departmental regulation or instruction in all that time, it being considered that the action taken by the department January 3, 1889, and which action was recalled and rescinded before the same had taken effect, did not amount to a disturbance or impeachment of the otherwise unbroken practice.

In view of the long-settled rule and practice upon the subject, the department does not deem it conformable to the public interest to disturb the decision deliberately reached and repeatedly affirmed, and must hold that the question is no longer open to administrative construction. *It only remains to advise you that while these rulings are adhered to in deference to the reasonable requirements of commerce, not to permit such practice to degenerate into a license for the free importation of foreign-built railway cars into the domestic traffic of the United States under cover of the established usage described in the preceding paragraphs.* (Italics ours.)

Respectfully, yours,

WILLIAM WINDOM, *Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

In the year 1892 the department issued further regulations in line with the foregoing, as follows:

(T. D. 12859).

To officers of the customs and others:

The department has uniformly conceded to railroad companies engaged in the transit trade between the United States and adjacent countries the right to run their cars partly over such adjacent territory and partly over United States territory without the payment of duty on entrance into this country, such cars being regarded "as simply vehicles of transportation for the conducting of an established and legalized traffic." As pointed out in department's decision of August 3, 1889 (synopsis 9549), a liberal

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construction of law in this respect is authorized by sections 3005, 3006, and 3102, Revised Statutes.

No question has been heretofore raised as to the inclusion in this immunity from duty of foreign locomotives, which enter the United States with trains of cars for the purposes mentioned. It appears, however, from information recently received, that a loose practice has grown up in some localities in regard to such locomotives, and that after reaching this country in their legitimate occupation with trains, they are withdrawn from that use and employed on branch railroads and in switching trains at interior stations. It seems necessary, therefore, to set forth distinctly the privileges which are accorded to locomotives on frontier routes.

Every foreign locomotive on a continuous route crossing the boundary into the United States shall be allowed to bring its train directly to and from the first customs port on its route, or to and from the termination, in the United States, of what is technically known as the "run" of the locomotive, if it be beyond the limits of such port, but no foreign-made locomotive shall be employed for the continuance of the inward trip unless such locomotive shall have been duly entered for duty in the United States.

No foreign-made locomotive (unless regularly entered at the customhouse) shall be used on the railroads of this country, except as aforesaid, for any purpose whatever.

Officers of customs are directed to observe this traffic and to seize any locomotive found to be used in violation of the above rule.

O. L. SPAULDING, *Acting Secretary.*

This subject was again referred to by the department in T. D. 16258, and the subject of locomotives crossing the international boundaries was provided for by article 660, Customs Regulations of 1908, but no departure from the foregoing principles was made in either publication.

The following is a copy of article 660, just referred to:

ART. 660. *Entry—Seizure.*—Every foreign locomotive on a continuous route crossing the boundary into the United States shall be allowed to bring its train directly to and from the first customs port on its route, or to and from the termination in the United States of what is technically known as the "run" of the locomotive, if it be beyond the limits of such port, but no foreign-made locomotive shall be employed for the continuance of the inward trip unless such locomotive shall have been duly entered for duty in the United States.

No foreign-made locomotive (unless regularly entered at the customhouse) shall be used on the railroads of this country, except as aforesaid, for any purpose whatever.

Officers of customs are directed to observe this traffic and to seize any locomotive found to be used in violation of the above rule.

Although the foregoing regulation relates in terms to locomotives only, it expresses the principles governing the department's regulations in relation to railway cars also.

In the year 1896 the department issued the following ruling:

(T. D. 17038.)

TREASURY DEPARTMENT, *April 27, 1896.*

SIR: The department duly received your letter of the 13th of January last, and has received a report upon the matter from Special Agent George W. Whitehead.

In your letter you called the attention of the department to the fact that rolling stock of the New Mexican & Arizona Railway Co. and of the Sonora Railway, which

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passes to and fro between Mexico and the United States, is frequently repaired at Guaymas, Mexico, and that no duty has been paid upon such repairs.

In reply, you are informed that the department has decided that such passage of railway trains on regular routes on the borders of contiguous foreign territory is not an importation, and that incidental repairs to the same do not affect such condition. (See Synopses 9549, 12859, 16258, and 16271.)

You will be governed accordingly.

Respectfully, yours, W. E. Curtis,
(962h.) *Assistant Secretary.*

Collector of Customs, *Nogales, Ariz.*

The foregoing rulings and regulations issued by the Treasury Department have long stood as the interpretations of the law upon the present subject, as understood and enforced by the department, and it may well be said that they have been sanctioned by long-continued legislative acquiescence. They prescribe the limitations under which the right now claimed by appellee may lawfully be enjoyed, and we are convinced that the appellee's claim can not prevail unless the present transaction is within the purview of these regulations. They plainly extend to international railway companies the right to bring their locomotives and cars free of duty across the international boundary and into this country in the due course of international traffic only, and do not permit, but indeed expressly forbid, that either locomotives or cars should come into the country in such case free of duty in order to engage for any period in local or domestic traffic only. It is plain, also, that the reason for the exemption from tariff duties in the case of locomotives and cars while actually engaged in international traffic does not apply at all to those which come across the boundary in order to engage in local or domestic traffic only in this country. In the latter case they take their place in the domestic commerce of this country, their domestic use making them articles of commerce here as distinctly as if they were brought here for sale, and when they are in use in this country they displace to that extent domestic vehicles which have either been manufactured in this country or have been imported into the country upon the payment of tariff duties. If a railway company located entirely within this country were to bring a Canadian railway car into this country for local or domestic use it would certainly be required to pay customs duties upon it. There appears to be no reason why the same rule should not obtain in the case of an international railway, since the favoring exemption in the case of international traffic was simply designed to facilitate such traffic and not for the purpose of enlarging the rights of international railways in any other particular. The exemption from customs duties thus permitted should therefore be extended only in so far as it subserves the purpose of that and incidental local traffic, and this rule is clearly set out in the several departmental regulations above

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copied. The present case therefore depends for decision upon facts and principles which differ essentially from those set out in the *Conqueror* case (166 U. S., 110), which is specially relied upon by the appellee.

It is contended on behalf of the appellee company that in fact it never intended to "import" the car in question into this country, and never appropriated it permanently to domestic service here, but always intended to return the car to its former international service so soon as traffic conditions required it, and it is insisted that this intention should be the controlling fact in the case. It is also contended that the car was actually engaged in international traffic when in service between Duluth and Cusson, since it even then handled international mail under a contract with the United States, which mail was transferred, however, at Cusson to other trains and carried by them to Canadian stations.

We can not agree with either of these arguments. If a foreign article which is not intrinsically nondutiable, nor within the free list of the tariff law, be brought into this country for an indefinite period of domestic use here, which period might even continue until the article itself were worn out by use, it can not be saved from the character of an importation by reason of the fact that the owner actually intended to take it out of the country again at an indefinite time in the future. Kidd *v.* Flagler (54 Fed., 367). And in the case of the present car we construe its service between Duluth and Cusson to be local and domestic notwithstanding the fact that it carried mail between those stations which was ultimately destined for Canada, or had originally come from that country. If the transportation of such mail between intrastate stations constitutes international traffic, then every mail car in the United States would be engaged in international traffic. This would certainly be too broad an interpretation to place upon that title.

We are therefore of the opinion that the facts above stated brought the car in question within the character of an importation and made it dutiable as such under the tariff laws of this country.

The collector, as above stated, assessed the car, in the absence of a specific enumeration of railway cars in the act, as a manufacture composed in chief value of metal, and accordingly assessed duty upon it at the rate of 20 per cent ad valorem under paragraph 167 of the act. The appellee company contended in its protest that the car, in fact, was composed in chief value of wood, and therefore that in no event should it be assessed with duty at more than 15 per cent ad valorem under paragraph 176 of the act.

Upon this issue we have, upon the one side, the presumption of correctness which attends the assessment of the car as composed in chief value of metal, and, upon the other hand, we have the state-

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the component material of chief value in the car. The presumption in favor of the collector's finding is weakened to some extent by the advisory classification of the car by the appraiser as composed in chief value of wood. And, besides this, the testimony of the witness, while somewhat indefinite, is uncontradicted except by the assessment itself. It may again be noted that the board made no finding upon this subject. Upon this state of the record we hold that the car should have been assessed with duty at but 15 per cent ad valorem as a manufacture composed in chief value of wood under paragraph 176 of the act.

The views above expressed make it unnecessary for us to discuss the question whether the customs entry of the car in question by the appellee precludes or in any manner affects the appellee's contention that the car never became an importation.

The decision of the board sustaining the protest of the appellee is therefore reversed, but reliquidation is ordered at 15 per cent ad valorem under paragraph 176 in accordance with the views above set out.

Reversed.

(T. D. 36514.)

Exemption under paragraph 642.

Appeal directed from decision of the Board of United States General Appraisers of April 21, 1916, Abstract 39605, involving the free entry of certain wearing apparel under paragraph 642 of the tariff act.

TREASURY DEPARTMENT, *June 19, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 17th instant, relative to the decision of the Board of United States General Appraisers of April 21, 1916, Abstract 39605, wherein certain wearing apparel was held by the board to be entitled to free entry under the provisions of paragraph 642 of the tariff act, notwithstanding the fact that the articles had not been acquired abroad by the passenger as provided by said paragraph 642.

As the department has held in T. D. 35296 that articles ordered abroad for future delivery are not entitled to free entry under said paragraph, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(105187.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36515.)

Reappraisement samples.

Samples in reappraisement cases to be forwarded to the Board of General Appraisers only when hearing is to be held at New York.

TREASURY DEPARTMENT, *June 20, 1916.*

To collectors of customs and others concerned:

It has been brought to the attention of the department that when appeals to reappraisement are filed, samples are forwarded to the Board of United States General Appraisers at New York, notwithstanding that the hearing is to be held at the port of entry and that it is necessary to ship them back to the port of entry to be used at the hearing.

Collectors are instructed that samples should be forwarded to the Board of General Appraisers only in cases where the importer waives the right to have the appraisement held at the port of entry and requests that the hearing be held in New York. In other cases the samples will be held at the port of entry.

(104433.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36516.)

Drawback on wall coverings, etc.

Drawback on wall coverings, canvases, and similar materials manufactured by the Richter Manufacturing Co., of Tenafly, N. J., with the use of imported burlap, linen, and jute fabrics.—T. D. 27316 of April 28, 1906, revoked.

TREASURY DEPARTMENT, *June 20, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on wall coverings, canvases, and similar materials manufactured by the Richter Manufacturing Co., of Tenafly, N. J., with the use of imported burlap, linen, and jute fabrics, in accordance with their sworn statement of June 1, 1916, transmitted herewith.

A manufacturing record shall be kept in the manner described in the sworn statement of the mnufacturers, above referred to, showing, in the case of each lot of material manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, character, and trade name of the material produced, and the quantity, character, and identity of imported material appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

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The allowance shall not exceed the quantity of imported material appearing in the exported wall coverings, etc., as shown by the abstract from the manufacturing record.

T. D. 27316 of April 28, 1906, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(36883.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36517.)

Drawback on pulverized metallic magnesium.

Drawback on pulverized metallic magnesium manufactured by the General Electric Co., of Schenectady, N. Y., from imported metallic magnesium slabs for the account of P. Tozzi, of New York, N. Y.

TREASURY DEPARTMENT, *June 20, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on pulverized metallic magnesium manufactured by the General Electric Co., of Schenectady, N. Y., from imported metallic magnesium slabs for the account of P. Tozzi, of New York, N. Y.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated May 16, 1916, showing, in the case of each lot of pulverized metallic magnesium manufactured for the account of P. Tozzi, the lot number and date of manufacture thereof, the quantity and identity of the imported metallic magnesium slabs used, the quantity of pulverized metallic magnesium obtained therefrom, and the quantity of waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported metallic magnesium slabs used in the manufacture of the pulverized metallic magnesium exported, as shown by the abstract from the manufacturing record.

The sworn statements of P. Tozzi and the General Electric Co., dated May 10 and 16, 1916, respectively, are transmitted herewith.

Drawback may be allowed under these regulations on pulverized metallic magnesium exported on and after January 15, 1916.

Respectfully, ANDREW J. PETERS,
(104567.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36518.)

Water-color designs.

So-called water-color designs on paper used in the printing of cretonne dutiable at the rate of 25 per cent ad valorem under paragraph 332, tariff act of 1913, as manufactures of paper or of which paper is the component material of chief value.

TREASURY DEPARTMENT, *June 20, 1916.*

SIR: The department duly received your letter of March 22, 1916, relative to the duty on so-called water-color designs used in the printing of cretonne.

It appears that the appraiser at your port, following T. D. 36166, is returning such articles as duitable at the rate of 25 per cent ad valorem as manufactures of paper under paragraph 332 of the tariff act.

In the said decision the articles, it appears, consisted of water-color sketches on paper described as designs for cretonne cloth. They had been assessed with duty at the rate of 15 per cent ad valorem as water-color designs under paragraph 376 of the tariff act, but the local appraiser in his report stated that they would now be returned under paragraph 332 at 25 per cent ad valorem as manufactures of paper. Claim was made for free entry under paragraph 652.

The Board of General Appraisers held that the articles were water-color paintings, and that as they were articles of utility they were excluded from classification under paragraph 652 by the provision of the paragraph that the word "painting" as used therein "shall not be understood to include any article of utility," and overruled the protest. It appears also that the articles are not works of art. (Note T. D. 27913 and T. D. 29806 relative to fashion-plate drawings.) They would, therefore, appear to be excluded from paragraph 376. (Note T. D. 34929, T. D. 36196, and T. D. 36197; also Abstract 39857 relative to water-color designs for cretonne cloth, wherein the board overruled the protest making claim under paragraph 652 without sustaining the collector's classification under paragraph 376.)

It appears, therefore, that following these decisions there is no specific provision in the tariff act for the designs themselves, and as it would appear that the value of the paper exceeds the value of any other material in the article, the department concurs in the classification of the merchandise in question as dutiable at the rate of 25 per cent ad valorem under paragraph 332 of the tariff act of 1913 as manufactures of paper or of which paper is the component material of chief value.

You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(89573.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36519.)

Litmus paper in book form.

So-called books of litmus paper consisting of strips of litmus paper about 2½ inches long by three-eighths of an inch wide, stitched together at one end and having a surface-coated paper cover, dutiable as manufactures of bibulous paper or of which such paper is the component material of chief value at the rate of 30 per per cent ad valorem under paragraph 323 of the tariff act of 1913.—T. D. 36274 of March 29, 1916, modified.

TREASURY DEPARTMENT, *June 21, 1916.*

SIR: I have to refer to the department's letter of March 29, 1916 (T. D. 36274), relative to the classification of litmus paper, in which you were instructed to assess duty on such merchandise in sheets as bibulous paper at the rate of 30 per cent ad valorem under paragraph 323 of the tariff act, or if in book form, as books not specially provided for at the rate of 15 per cent ad valorem under paragraph 329.

It appears from the samples of so-called books of litmus paper now furnished the department that they consist of between 40 and 50 strips of litmus paper about 2½ inches long by three-eighths of an inch wide, stitched together on one end and having a surface-coated paper cover.

It would not appear that such articles rise to the dignity of books, and the department is of the opinion that they are properly dutiable as manufactures of bibulous paper, or of which such paper is a component material of chief value, at the rate of 30 per cent ad valorem under paragraph 323 of the tariff act of 1913. You will be governed accordingly on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof.

T. D. 36274 of March 29, 1916, is hereby modified in accordance herewith.

Respectfully, ANDREW J. PETERS,
(98379.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 36520.)

Drawback on gasoline locomotives.

Drawback on gasoline locomotives manufactured by the Baldwin Locomotive Works, of Philadelphia, Pa., with the use of imported ball bearings or with the use of transmissions containing imported ball bearings manufactured by the Clark Bros. Co., of Olean, N. Y.

TREASURY DEPARTMENT, *June 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on gasoline locomotives manufactured by the Baldwin Locomotive Works, of Philadel-

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phia, Pa., with the use of imported ball bearings or with the use of transmissions containing imported ball bearings manufactured by the Clark Bros. Co., of Olean, N. Y.

A manufacturing record shall be kept by each of the manufacturers, showing, in the case of each article manufactured for exportation with benefit of drawback, the serial number and date of manufacture thereof and the number and identity of imported ball bearings appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the number of imported ball bearings appearing in the exported gasoline locomotives, as shown by the abstracts from the manufacturing records.

Drawback may be allowed under these regulations on gasoline locomotives exported on or after February 18, 1916.

Respectfully, ANDREW J. PETERS,
(20030.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 36521.)

Drawback on watches and clocks.

Drawback on watches and clocks manufactured by the Ansonia Clock Co., of New York, N. Y., with the use of various imported materials.—T. D. 13281 of September 29, 1892, and T. D. 16675 of January 11, 1896, revoked.

TREASURY DEPARTMENT, *June 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on watches and clocks manufactured by the Ansonia Clock Co., of New York, N. Y., with the use of imported watch crystals or glasses, porcelain, onyx, and marble cases, tops, and bases, beveled glasses, and glasses made from imported window glass.

The allowance shall not exceed the quantities of imported materials appearing in the exported watches and clocks, as shown by the sworn statement and schedule of the manufacturers, dated May 27, 1916, transmitted herewith for filing in your office.

Supplemental sworn statements and schedules covering other styles of watches and clocks or showing the use of different quantities and kinds of imported materials may be filed, and upon verification of such supplemental sworn statements and schedules drawback may be allowed on the watches and clocks covered thereby.

T. D. 13281 of September 29, 1892, and T. D. 16675 of January 11, 1896, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(103570.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36522.)

Amendment to article 694, Customs Regulations of 1915.

Transportation and exportation entries of merchandise subject to inspection by Department of Agriculture to be made on customs Cat. No. 7511. Shippers' export declarations to be filed with the collector at the port of exit.

TREASURY DEPARTMENT, *June 22, 1916.*

To collectors and other officers of the customs:

The last paragraph of article 694 of the Customs Regulations of 1915 is hereby amended to read as follows:

"Transportation and exportation entries of merchandise free of duty but subject to inspection by the Department of Agriculture must be entered on customs Cat. No. 7511. Other merchandise which is free of duty may be entered on customs Cat. No. 7511 or upon customs Cat. No. 7509. If the latter form be used it will be made in triplicate, and if the merchandise be found to be free of duty by the inspector at the first port of arrival it will be permitted to go forward without carrier's special manifest and without customs seals. The collector at the first port of arrival will mail one copy of customs Cat. No. 7511 or 7509, as the case may be, to the collector at the port of exit.

"A charge of $25 will be made against the carrier's bond for each shipment on customs Cat. No. 7509, which charge will be canceled upon the production of a certificate of the carrier's agent at the port of exportation showing the date of exportation and the name of the export vessel.

"The transportation company shall file with the collector at the port of exit a shipper's export declaration upon customs Cat. No. 7525, noting thereon that the merchandise is covered by transportation and exportation entry on customs Cat. No. 7509 and giving the entry number."

(100477.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36523.)

Paper crochet patterns.

Crochet patterns composed of uncoated paper, with the surface partly covered with a design or pattern, dutiable at the rate of 35 per cent ad valorem under paragraph 324, tariff act of 1913.

TREASURY DEPARTMENT, *June 22, 1916.*

SIR: The department duly received your letter of the 1st instant, inclosing a communication from the appraiser at your port relative to the proposed change in classification of paper crochet patterns represented by the accompanying sample.

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The articles in question consist of sheets of uncoated paper 9 by 4½ inches, embossed with a crochet work design, 5 by 2 inches, showing six repeats of a pattern of lace, illustrating the character of work which may be made from mercerized crochet cotton yarns. The lace design is surrounded by a printed background, and the top and bottom of the sheet contain advertising matter.

It appears that it has been the practice to classify the merchandise as dutiable at the rate of 15 per cent ad valorem as printed matter under paragraph 329 of the tariff act of 1913, and it is now proposed to change the classification to that of articles composed of uncoated paper, with the surface partly covered with a design or pattern, dutiable at the rate of 35 per cent ad valorem under paragraph 324 of the said act.

As it appears that the articles are composed of uncoated paper with the surface partly covered with a design or pattern, the department concurs in the proposed classification of the merchandise as dutiable at the rate of 35 per cent ad valorem under the provision for such articles in paragraph 324 of the tariff act of 1913.

You will be governed accordingly on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof.

Respectfully, ANDREW J. PETERS,
(105151.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 36524.)

Boxes covered with surface-coated paper.

Appeal directed from decision of the Board of United States General Appraisers of April 19, 1916, Abstract 39582, involving the classification of certain boxes composed of silk and paper.

TREASURY DEPARTMENT, *June 22, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 17th instant, inviting attention to the decision of the Board of United States General Appraisers of April 19, 1916, Abstract 39582, involving the classification of certain boxes made of silk and paper, and to the decision of May 17, 1916 (Abstract 39804), denying the Government's application for a rehearing in the case.

The merchandise was assessed with duty at the rate of 45 per cent ad valorem as manufactures of silk under paragraph 318 of the tariff act of October 3, 1913, but was held by the board to be dutiable at the rate of 35 per cent ad valorem under the provisions for boxes of paper covered with surface-coated paper, etc., of paragraph 324 of the said act.

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You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the decision in question, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(101832.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36525.)

Uniform practice at ports.

Lading and unlading at night, Sundays, and holidays; compensation of officers; "a few minutes" used in T. D. 32043 of November 29, 1911, defined.

TREASURY DEPARTMENT, *June 23, 1916.*

To collectors of customs and others concerned:

In order that the practice at all ports shall be uniform, the expression "a few minutes" used in T. D. 32043 of November 29, 1911, relating to the lading and unlading of vessels, is hereby construed to mean any time less than 30 minutes.

(43444.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36526.)

Trinitrotoluol.

Trinitrotoluol free of duty under paragraph 501, tariff act of 1913, as an explosive substance not specially provided for, used for artillery purposes.

TREASURY DEPARTMENT, *June 24, 1916.*

SIR: The department is in receipt of your memorandum of the 12th instant, transmitting Ogdensburg entry No. B-887 covering certain trinitrotoluol.

It appears that the merchandise has been passed free of duty under paragraph 501 of the tariff act. You call attention to T. D. 34787, wherein the Board of United States General Appraisers on the record before it declined to disturb the classification of similar merchandise, following T. D. 26786, as a coal-tar product not specially provided for under paragraph 15 of the tariff act of 1909.

This matter has previously been before the department, and on investigation it appeared that the chief use of the article at the time of the passage of the tariff act of October 3, 1913, was as an explosive

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for artillery purposes. The department is, therefore, of the opinion that the merchandise is properly subject to classification as free of duty under paragraph 501 of the tariff act of 1913 as an explosive substance not specially provided for, used for artillery purposes.

Respectfully, ANDREW J. PETERS,
(70309.) *Assistant Secretary.*
AUDITOR FOR THE TREASURY DEPARTMENT.

(T. D. 36527—G. A. 7924.)

Silk veils.

Woven articles of different colors, of light texture, composed wholly of silk, measuring from 75 to 90 centimeters in width and 170 centimeters in length, some of which have fancy borders and others are hemstitched, and which are bought and sold under various designations such as "automobile veils," "chiffon veils," "motor veils," etc., are dutiable as silk veils at the rate of 60 per cent ad valorem under paragraph 358, tariff act of 1913, and not as silk wearing apparel under paragraph 317.

United States General Appraisers, New York, June 21, 1916.

In the matter of protest 737838 of E. & Z. Van Raalte against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Churchill, Marlow & Hines (*Wm. A. Hines* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

HOWELL, *General Appraiser:* The merchandise here in question was returned by the appraiser as "silk veils." The samples admitted in evidence consist of woven articles of different colors, of light texture, composed wholly of silk, and measuring from 75 to 90 centimeters in width and 170 centimeters in length. Some of the articles have hemstitched borders, while others are hemstitched at the ends and have a group of four or more closely woven stripes on the sides of the same color as the body of the fabric. Duty was assessed thereon by the collector at the rate of 60 per cent ad valorem under paragraph 358, tariff act of 1913. The claim relied on by the importers is that the articles are dutiable as silk wearing apparel at the rate of 50 per cent ad valorem under paragraph 317 of said act.

Precisely similar merchandise was passed upon by this board in the case of protest 732761 of the same importers, G. A. 7734 (T. D. 35498), and the record in that case has been incorporated with and made a part of the record in this case. In that case we called atten-

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tion to the fact that very little testimony had been produced as to the commercial designation of the articles, and said in part:

If the articles were known commercially as "veils" at and prior to the passage of the tariff act of 1913—and there is at least some evidence in the record tending to show that fact—then they would be dutiable under the *eo nomine* provision for *veils* in paragraph 358, notwithstanding the fact that their use may vary from time to time, according to the caprices of fashion. But if it be urged that it has not been satisfactorily shown that the term "veils" has any different meaning in the trade and commerce of this country from the common meaning of the word, and that therefore the common and commercial meaning must be presumed to be the same, we think that in this view of the case the articles fall within the term "veils." A *veil* is defined by the lexicographers as follows:

Webster's Dictionary:

1. Something hung up, or spread out, to intercept the view and hide an object; a cover; a curtain; esp., a screen, usually of gauze, crape, or similar diaphanous material, to hide or protect the face.

Standard Dictionary:

1. A piece of cloth or other material, usually thin and light, worn over the face or head for concealment, protection, or ornament. (1) A strip of cloth wound about the face to conceal it from view, as by oriental women, usually leaving the eyes visible, and now often covering only the mouth and chin. (2) In the ordinary dress of the women of modern western nations, a piece, as of gauze or crape, tied or pinned about the face or hanging from the hat or bonnet, as for protection from sun and wind.

Century Dictionary:

2. A piece of stuff, usually very light and more or less transparent, as lawn or lace, intended to conceal, wholly or in part, the features from close observation, while not materially obstructing the vision of the wearer; hence, such a piece of stuff forming a headdress or part of a headdress, especially for women. In the early middle ages the veil was commonly circular or semicircular in shape and was worn in many ways. At a later time it was attached to the high and heavy headdresses such as the *escoffion* and the *hennin*, and was a mere ornamental appendage, not admitting of being drawn over the face. The veil, when small, is indistinguishable from the kerchief. In modern use the veil is a piece of gauze, grenadine, lace, crape, or similar fabric used to cover the face, either for concealment or as a screen against sunlight, dust, insects, etc. In this capacity it usually forms no necessary part of the headdress, but is attached to the bonnet or hat. * * * Egyptian veil, in modern costume for women, a veil worn around the head and neck and tied under the chin.

We think the articles before us fall within the ordinary meaning of the word "veil" as given in the above definitions. It appears from the testimony that they are worn over the hat and around the head as a covering or protection, and that they are susceptible of use as a covering for the face, and have in fact been actually so used until a very recent date, when changes of fashion made that way of wearing them undesirable. It thus appears that they are suitable for use as face veils, and that they have been so used except when fashion dictated otherwise, and, of course, it follows that they may be again so used whenever fashion so decrees.

Furthermore, we think that the use of these silk chiffon articles as automobile veils is a matter of such common knowledge that the evidence furnished by an inspection of the goods, aided by nothing more than the facts of common knowledge and experience, of which judicial notice may be taken, would justify us in holding that the articles are dutiable as veils. United States *v.* Strauss (136 Fed., 185; T. D. 25895) and Krusi *v.* United States (1 Ct. Cust. Appls., 168; T. D. 31213).

In the case at bar testimony as to the commercial designation of the articles has been offered by both the importers and the Government, six witnesses in all having testified, and we think their testi-

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mony clearly shows that there never has been a time when these articles were not included within the term "veils" as that term has been understood by the trade dealing at wholesale in veils and veilings. The witnesses stated that the articles are bought and sold under the designations of "automobile veils," "chiffon veils," "motor veils," "automobile scarfs," and "chiffon scarfs." There is no *eo nomine* provision for scarfs in the tariff act, and they are therefore dutiable under the general provision therein for wearing apparel, whereas veils are denominatively provided for. The law applicable to such cases is well stated in the case of Sidenberg *v.* Robertson (41 Fed., 763), from which we quote:

> The plaintiff has to cover with his trade evidence both descriptions of words—the words under which the laces are actually bought and sold, and also the word or words under which he claims that they are not known. Of course, if the particular word or phrase by which they were bought and sold were one of the phrases or words in the tariff act, as soon as he had proved that the articles were bought and sold and known in commerce by that word or phrase, he would have proved his whole case. But where the particular word, the trade meaning of which he proves is not in the tariff act, and that instrument contains only general words, he must go further and prove not merely that the articles are bought by one particular trade name, but that the general words used in the tariff act, which otherwise would cover them, do not cover them in trade and commerce.

Applying that rule to the present case, we say that the importers have not made their case by showing that the goods are sometimes bought and sold as *scarfs*, a word not used in the tariff act, but they must go further and show that the articles are not known in trade and commerce by the term *veils*, which is used in the act. See, also, Loewenthal *v.* United States (2 Ct. Cust. Appls., 43; T. D. 31592) and cases there cited.

As we have stated, six witnesses were examined in this case as to the commercial designation of the articles, and without quoting their testimony it is enough to say they all admitted that some of the designations under which the goods were bought and sold were "automobile veils," "chiffon veils," and "motor veils."

We therefore conclude that the merchandise is included within the class of articles known to the trade as "veils," and hold that it is dutiable as assessed.

The protest is accordingly overruled.

(T. D. 36528—G. A. 7925.)

Machinery for use in the manufacture of sugar.

To be entitled to the benefit of free entry accorded "machinery for use in the manufacture of sugar," by virtue of the provision in paragraph 391, tariff act of 1913, it must be established that a machine is a necessary and essential part of the equipment of a sugar factory, and that it is used exclusively or chiefly in such factory.

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Machines employed in connection with the preparation of sugar for making chocolate in chocolate factories are not comprehended within the meaning of the provision in said paragraph 391.

United States General Appraisers, New York, June 23, 1916.

In the matter of protest 793050 of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*John Francis Strauss* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin* and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The article in question consists of a machine. Duty was levied thereon at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as a manufacture of metal not specially provided for. The contention of the importers is that said machine is properly entitled to free entry under the provision in paragraph 391 of said act for "machinery for use in the manufacture of sugar."

F. D. Canfield, the only witness who appeared in the case, testified that he was an engineer and manufacturer of sugar-making machinery; that he imported the machine in question upon order of Rockwood & Co., manufacturers of chocolate, in whose factory in Brooklyn, N. Y., the machine has been installed and is operated; that he was thoroughly acquainted with the said machine and had observed its operations both in England and America; that in England it was employed in the preparation of sugar for use in making crackers, while in Brooklyn it is used in the preparation of sugar used in the manufacture of chocolate; that after raw amorphous sugar has been melted by the addition of water and steam, it is converted into a sirup, and then concentrated and converted into sugar crystals as a result of the operation of the said machine; that in its operation the processes employed in connection with this machine are similar to those pursued generally in making sugars from cane juice, the only difference being those which result from the improved mechanism incorporated in the machine in question which tends to greatly simplify the work of sugar making; that while the machine in question operates on raw sugar in the present instance, it is nevertheless in fact a machine which is used in the manufacture of sugar, and is fully capable of making commercial sugar from the juice of the sugar cane.

However, counsel for the Government takes the position that the use for which this machine is employed does not place it in the class of machines for which free entry is accorded by Congress by virtue of the provision in paragraph 391; that it is not strictly speaking a sugar-

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making machine, but that it is rather a machine which manipulates sugar which is employed in the manufacture of chocolate.

In support of his contention counsel for the Government relies upon the decision of the United States Court of Customs Appeals in the case of United States *v.* American Express Co. (6 Ct. Cust. Appls., 494; T. D. 36124). In its opinion in that case, which affirmed the ruling of this board in G. A. 7687 (T. D. 35141), the court made the following observation:

> In our opinion the obvious intent of the provision was to favor the sugar-making industry and give the benefit of free entry at least to all machinery peculiar to and chiefly or exclusively used by sugar factories. That is to say, any machine constituting a necessary and essential part of the equipment of sugar factories and which is exclusively or chiefly used by them comes within the designation of "machinery for use in the manufacture of sugar."

It is plainly apparent from the testimony of the importer's own witness that he knows of only two machines of this character in existence, and that neither of them is employed in a sugar factory. In order to become entitled to participate in the benefits of the particular provision of paragraph 391 here under consideration it is absolutely essential that a machine must be shown to be a necessary and essential part of the equipment of a sugar factory, and that it shall be used exclusively or chiefly by it. The fact that the machine in question is capable of making sugar we do not believe is sufficient to bring it within the court's ruling. Moreover, what the witness believes the machine is capable of doing, and what the machine is actually employed in doing, are two separate and distinct propositions.

The protest is overruled and the decision of the collector is affirmed.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

Before Board 1, June 19, 1916.

No. 39897.—Protest 799936 of Canadian Pacific Railway Co. (Portland, Me.).

Auto Blocks—Manufactures of Wood.

McClelland, *General Appraiser:* The merchandise in question is invoiced as "auto shipping chocks." The official sample consists of a rough, sawed piece of soft wood 12 inches long, 4¼ inches wide, and 7 inches high at one end, tapering to three-fourths of an inch at the other end, the upper surface being concaved. Duty was assessed at the rate of 15 per cent ad valorem under paragraph 176 of the tariff act of 1913 as manufactures of wood, and protestants claim that free entry should have been allowed under the provision of paragraph 647 of said act for "wagon blocks, oar blocks, heading blocks, and all like blocks or sticks, rough hewn, sawed, or bored."

It appears from the testimony of the only witness called to testify that these chocks are the result of the following manufacturing processes: First, cutting into blocks

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16 by 7 by 4½; second, cutting this larger block into two blocks; third, cutting the smaller block on a band saw and running it through a dado head. When thus finished two of the chocks are put together and form a cradle into which the wheels of automobiles are set when shipped on railroad cars to keep them from slipping. The statement of the witness is that such chocks are sold as wagon blocks, automobile blocks, and thrashing-maching blocks, and, while the blocks sold for these several uses may differ somewhat in form, they are nevertheless all "like blocks" within the language of paragraph 647, supra, and should therefore have been admitted to free entry. The protest is sustained, the decision of the collector being reversed accordingly.

No. 39898.—Protests 785539, etc., of J. T. Steeb & Co. et al. (Seattle).

GRASS FURNITURE.—So-called grass furniture classified as sea grass chief value, at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable at 15 per cent as furniture in chief value of wood under paragraph 176.

Opinion by MCCLELLAND, G. A. It was found that wood is the component material of chief value. The furniture in question was held dutiable under paragraph 176, as claimed.

No. 39899.—Protest 801598 of Abraham & Strauss (New York).

PYROGRAPHIC BULBS—INDIA RUBBER.—India rubber pyrographic bulbs are claimed dutiable at 10 per cent ad valorem under paragraph 368, tariff act of 1913.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 39273 the pyrographic bulbs in question were held dutiable as manufactures of india rubber under paragraph 368, as claimed.

No. 39900.—Protests 791988, etc., of V. C. Squire (Detroit).

CATGUT.—Merchandise classified as manufactures of catgut at 20 per cent ad valorem under paragraph 366, tariff act of 1913, is claimed free of duty under paragraph 443 as catgut, manufactured.

Opinion by MCCLELLAND, G. A. The catgut in question was held free of duty under paragraph 443, as claimed. Abstract 39577 followed.

No. 39901.—Protest 786247 of Reed & Keller (New York).

RUSCUS LEAVES—IMMORTELLES.—Immortelles and other natural flowers artificially colored, and ruscus leaves, classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 210 and at 15 per cent under paragraph 385, respectively.

Opinion by MCCLELLAND, G. A. Upon stipulation of counsel the immortelles were held dutiable by similitude under paragraph 210. Bayersdorfer *v.* United States (7 Ct. Cust. Appls., —; T. D. 36390) followed. The natural ruscus leaves, sun bleached, were held dutiable at 15 per cent under paragraph 385. Abstract 39838 followed.

No. 39902.—Protests 764777, etc., of Adolph Strauss & Co. (New York).

PEN AND PENCIL HOLDERS—POCKET PENCILS.—Combination pen and pencil holders composed of metal, and pencils in the shape of a gun having means for projecting and withdrawing the lead point into the barrel, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 167; at 36 cents per gross or 25 per cent ad valorem under paragraph 378; or at 25 per cent under paragraph 157.

Opinion by SULLIVAN, G. A. On the authority of Abstract 38950 the combination pen and pencil holders were held dutiable under paragraph 157. The pencils in the shape of a gun were held dutiable as manufactures of metal under paragraph 167. Abstract 39085 followed. G. A. 7625 (T. D. 34870), affirmed in Hensel *v.* United States (6 Ct. Cust. Appls., 162; T. D. 35434), distinguished.

No. 39903.—Protest 774857-55737 of Marshall Field & Co. (Chicago).

JET BROOCHES—JEWELRY.—Merchandise invoiced as jet brooches, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed

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dutiable as manufactures in chief value of glass or paste at 30 per cent ad valorem under paragraph 95 or as manufactures in chief value of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. It was found that these brooches are made of metal set with black glass or paste and that they are jewelry, but there was no proof as to the component material of chief value. Protest overruled.

BEFORE BOARD 2, JUNE 19, 1916.

No. 39904.—Protests 765423-55036, etc., of Theo. Ascher Co. (Chicago).

SUFFICIENCY OF PROTEST—MULTIFARIOUS CLAIMS.—These protests are loosely drawn and contain inconsistent and irrelevant claims.

Opinion by HOWELL, G. A. On the authority of Lichtenstein *v.* United States (1 Ct. Cust. Appls., 79; T. D. 31105), followed in G. A. 7661 (T. D. 35048), the protests in question were found to be multifarious and insufficient.

No. 39905.—Protest 794411 of A. A. Vantine & Co. (New York).

SCREENS.—Screens composed of a wooden frame and cotton panel, classified as embroidered cotton articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be dutiable as manufactures of cotton at 30 per cent under paragraph 266.

Opinion by HOWELL, G. A. It was found that the screens are composed in chief value of cotton and that they are not embroidered. They were held dutiable under paragraph 266.

No. 39906.—Protests 758685, etc., of Stern & Bendix (New York).

WOVEN FABRICS OF COTTON AND SILK.—Woven fabrics composed of silk and cotton, classified as silk chief value at 45 per cent under paragraph 318, tariff act of 1913, are claimed to be cotton chief value, dutiable at 30 per cent under paragraph 254.

Opinion by HOWELL, G. A. It was found that the component material of chief value in the goods in question is cotton. They were held dutiable under paragraph 254. Protests sustained in part.

No. 39907.—Protests 758137, etc., of Francois Coste et al. (New York).

SILK VELVETS.—Woven fabrics in the piece, composed in chief value of silk, the face of the fabric being partially covered with a pile surface, classified as velvet at 50 per cent ad valorem under paragraph 314, tariff act of 1913, are claimed dutiable as woven silk fabrics at 45 per cent under paragraph 318.

Opinion by HOWELL, G. A. On the authority of Abstract 38279 the goods were held dutiable as pile fabrics under paragraph 314, as classified. United States *v.* Schumacher (3 Ct. Cust. Appls., 301; T. D. 32586), affirming G. A. 7248 (T. D. 31756), noted.

BEFORE BOARD 3, JUNE 19, 1916.

No. 39908.—Protest 791183 of Continental Color & Chemical Co. (New York).

COVERINGS OF LIQUIDS AND SEMILIQUIDS—SUFFICIENCY OF PROTEST.

HAY, *General Appraiser:* The merchandise in this case was entered on December 16, 1907, by the Badische Co. upon the blank of the Continental Color & Chemical Co., a rubber stamp being used to blot out the name of the Continental Color & Chemical Co. and to substitute the name of the Badische Co. This entry was liquidated May 20, 1908, and on May 28, 1908, a protest against the assessment of duty on certain coverings of a semiliquid merchandise, signed by the Continental Color & Chemical Co., by Walden & Webster, attorneys, was filed with the collector. At the hearing counsel for the Government moved the dismissal of the protest upon the ground that it was not signed by the owner, importer, consignee, or agent of the merchandise. Testi-

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mony was introduced to show that the Badische Co. was the successor to the Continental Color & Chemical Co., the present owners of the merchandise, and that through the inadvertence of a clerk in the office of the attorneys filing the protest the name of the Continental Color & Chemical Co. was signed to the protest. It is established by the record that Walden & Webster are the attorneys for both the Continental Color & Chemical Co. and the Badische Co. The protest, in our judgment, is sufficient. The testimony clearly shows that the Badische Co. are the owners of the merchandise, and that that is simply another name for the Continental Color & Chemical Co., and succeeded to any rights that the Continental Color & Chemical Co. may have had. The Badische Co. being the importers of the merchandise, the signing of the name Continental Color & Chemical Co. to the protest was done in error, and the same should be treated as if the name of the new company, the Badische Co., were signed to it. See H. E. Frankenberg Co.'s case, Abstract 2241 (T. D. 25482); F. Ludewig & Co.'s case, Abstract 29695 (T. D. 32812); and Hallett & Chard's case, Abstract 39180.

The coverings in question come squarely within the rule laid down by the Court of Customs Appeals in United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383). The protest is sustained and the collector directed to reliquidate the entry accordingly.

No. 39909.—Protest 798229 of J. & A. Grimond (New York).

Clerical Error.—It is claimed that through clerical error the broker entered the merchandise in question at the invoice price instead of the actual market value at the time of shipment, which was also stated upon the invoice.

Opinion by Hay, G. A. On the authority of United States *v.* Kuppenheimer (6 Ct. Cust. Appls., 389; T. D. 35925) protest overruled.

No. 39910.—Protest 800435 of Robert Keith Furniture & Carpet Co. (St. Louis).

Clerical Error.—It is claimed in this case that there was a clerical error in making the calculations upon the entry.

Opinion by Hay, G. A. It was found that no clerical error was disclosed within the meaning of the rule in United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) and United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485). Protest overruled.

No. 39911.—Protest 794995 of W. F. Kenney (New York).

American Goods Returned.—Certain stamp-vending machines are claimed free of duty as American goods returned under paragraph 404, tariff act of 1913.

Opinion by Hay, G. A. The machines in question were found to be partially of foreign manufacture, and it was also found that the regulations had not been complied with. Protest overruled.

Before Board 1, June 21, 1916.

No. 39912.—Protests 756168, etc., of Germania Importing Co. (New York).

Oxidized Linseed Oil—Linoleum Cement.

McClelland, *General Appraiser:* The special reports of the appraiser on these protests state that—

The merchandise described on the invoices as linoleum cement consists of oxidized linseed oil of the same character as the so-called cement subject of Abstract 21166. It was returned for duty accordingly as oxidized linseed oil at 10 cents per gallon under paragraph 45, act of 1913.

Duty was assessed in accordance with said return of the appraiser. Protestants claim that duty should have been assessed at either 10 or 15 per cent ad valorem under paragraph 58, 63, or 74 of said act.

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The witness Staber, at page 14 of the record, testified regarding the sample of the merchandise which he analyzed for protestants:

Q. But taking the mass as a whole you would recognize it, wouldn't you, as oxidized linseed oil?—A. Looking at it superficially; yes.

Q. Looking at it superficially and in conjunction with your analysis, it still responds in general for tests of oxidized linseed oil?—A. The greater part; yes.

From the testimony of the chemists who analyzed samples of the importations for the importers it appears that they found from 1.26 to 8 per cent of rosin in the samples. Such percentages of rosin present in the merchandise is not inconsistent with the fact that it is oxidized linseed oil, for the reason that it is shown that rosin is added in the form of lead manganese or lead calcium rosiate as a drier.

The analysis of a sample of the merchandise made in the laboratory of the appraiser's office indicates that it contained no rosin, and the percentages of other ingredients therein varied but little from the report of the official chemist on merchandise which was the subject of Abstract 21166 and therein held to be dutiable as oxidized linseed oil.

The merchandise involved being shown by the testimony to be substantially the same as that covered by Abstract 21166, supra, which for a period of about eight years has been returned as oxidized linseed oil, we affirm the collector's assessment of duty and overrule the protests.

No evidence having been offered in support of the issue involving the 5 per cent discount of duties under subsection 7 of paragraph J of section 4 of said tariff act, the claim in respect thereof in protest 756168 is hereby overruled.

No. 39913.—Protest 803907 of Frankel, Gerdts & Co. (San Francisco).

LEAF TOBACCO.—Unstemmed leaf tobacco imported from Cuba, classified at $1.85 per pound under paragraph 181, tariff act of 1913, is claimed dutiable as filler tobacco at 35 cents per pound.

Opinion by MCCLELLAND, G. A. It was found that the entire contents of the bales in question are filler tobacco, which was held dutiable at 35 cents per pound under paragraph 181.

No. 39914.—Protests 750265, etc., of W. H. Stiner & Son (New York).

ASTRAKHAN—PILE FABRICS.

BROWN, *General Appraiser:* This is a case brought to determine whether certain so-called astrakhans or caraculs were properly classified, so far as they were made from mohair, at 45 per cent under paragraph 309, act of 1913, and so far as they are made from wool, at 40 per cent under paragraph 288 of said act as pile fabrics, cut or uncut.

The importers claim that the goods should be classified under paragraph 288, at 35 per cent, as wool cloth, and under paragraph 308, at 40 per cent, as cloth made of the hair of the Angora goat, and he submits his case upon the samples introduced at the hearing and upon a statement of the appraiser in his report that the fabrics were similar to certain goods held not to be commercially pile fabrics by the Circuit Court of Appeals on appeal from G. A. 1020. (See T. D. 14120.)

The merchandise in question, known as astrakhans, is what may be called an uncut pile. The testimony and samples show that it is exactly the same class of goods which were held to be within the common meaning of the term "pile fabrics" in the case of Knauth, Nachod & Kuhne *v.* United States (6 Ct. Cust. Appls., 128; T. D. 35389), wherein the court pointed out that in the later acts Congress had clearly intended to cover by the term "pile fabrics" both the cut and the uncut pile and held such merchandise to be pile fabrics.

The Government, over the objection of the importers, introduced testimony in an effort to show that the commercial meaning of the term "pile fabrics" included the fabrics here in controversy. This testimony fails to show any commercial meaning different from the common meaning or to establish a definite, uniform, and general

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commercial meaning of the term "pile fabrics." For this reason, even if inadmissible. it was of no damage to the importers in view of the fact that the decision of the Court of Customs Appeals above mentioned covered the issue here involved, the merchandise being of the same character.

The protests are therefore overruled, considering only the common meaning of the term, and the classification as pile fabrics is affirmed.

The further claim in the protests for 5 per cent discount under section 4, paragraph J, subsection 7, is unsupported by evidence and no reference was made thereto at the trial, this claim is therefore overruled. Protests overruled in all respects.

No. 39915.—Protest 701153 of A. Giurlani & Bro. (San Francisco).

FISH IN TINS.—Salted anchovies in tins classified at 30 per cent ad valorem under paragraph 270, tariff act of 1909, are claimed dutiable as herrings at one-half of 1 cent per pound under paragraph 272.

Opinion by BROWN, G. A. On the authority of United States *v.* Miller (5 Ct. Cust. Appls., 256; T. D. 34443) salted anchovies were held dutiable as herrings under paragraph 272.

No. 39916.—Protests 779850, etc., of American Shipping Co. et al. (New York).

FISH IN TINS.—Various kinds of fish classified as fish in tins under paragraph 216, tariff act of 1913, are claimed dutiable as fish, skinned or boned, under the same paragraph, or free of duty under paragraph 483 as fish not otherwise provided for.

Opinion by BROWN, G. A. Protests unsupported; overruled.

No. 39917.—Protest 797488 of Cheseboro Bros. (Ogdensburg).

FISH ROE, PRESERVED.—Merchandise invoiced as salmon eggs, classified as fish roe, preserved, at 30 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed free of duty as eggs of fish under paragraph 478.

Opinion by BROWN, G. A. There being nothing in the record to show that the fish roe is not preserved, it was held properly classified under paragraph 216.

No. 39918.—Protest 794236 of Isaacs, Vought & Co. (New York).

FLANNELS.—Merchandise classified as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as flannels under paragraph 289.

Opinion by BROWN, G. A. The merchandise was found to be flannels composed wholly or in chief value of wool and was held dutiable under paragraph 289, as claimed.

No. 39919.—Protest 780597 of Lewis & Conger (New York).

POLISHING CLOTHS—BELLOWS—SILVER POLISH.—Polishing dusters composed of velvet, classified as cotton velvet at 40 per cent ad valorem under paragraph 257, tariff act of 1913, is claimed dutiable at 25 per cent under paragraph 264. Bellows composed of wood, leather, and other materials, classified as manufactures of leather at 30 per cent under paragraph 360 are claimed dutiable as manufactures in chief value of wood at 15 per cent under paragraph 176. A preparation specially designed for cleaning silver, classified as polishing powder at 15 per cent under paragraph 11, is claimed free of duty as bone dust under paragraph 423.

Opinion by BROWN, G. A. On the authority of G. A. 7656 (T. D. 35019) the polishing cloths in question were held dutiable under paragraph 264. Protest overruled as to the bellows. It was found that the polishing powder is composed mainly of bone dust which seems to have been prepared and put up for use as a preparation for cleaning or polishing silver and is not simply "bone dust" provided for in paragraph 423. It was held properly classified as a polishing powder under paragraph 11.

No. 39920.—Protest 765561 of Morey & Co. (Boston).

MACHINE BLANKETS.—Wool blanket material 6 to 10 feet wide, made endless like a belt, for use on machines in paper mills, classified as manufactures of wool at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable under the provision for blankets in paragraph 289 at 25 per cent.

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BROWN, *General Appraiser:* * * * From an examination of the record and sample we conclude that these articles are not blankets within the ordinary meaning of that term. They are articles which, although made from what might be called blanket material, are specially designed and manufactured for use in paper making, and we do not think that Congress in enacting the provision for "blankets" intended to include articles which may be described as machine blankets, printing blankets, mining blankets, and which are designed for use in paper machines, in printing machines, or in mining operations. The provision for blankets must be held to be limited at least to bed blankets and blankets used for bodily protection; that is, to keep out the cold, although not on a bed. See G. A. 7919 (T. D. 36486) covering protest 765909, decided June 9, 1916.

We therefore hold the merchandise properly dutiable as classified and overrule the protest.

No. 39921.—Protest 764341 of Massce & Co. (New York).

TEAZLED CLOTH—PILE FABRICS.—Cloth subjected to the teazling process, which roughens the surface and gives a soft effect, classified as pile fabrics at 40 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as wool cloth at 35 per cent under the same paragraph.

Opinion by BROWN, G. A. On the authority of G. A. 7906 (T. D. 36403) the goods in question were found not to be pile fabrics within the common meaning of that term. They were held dutiable as wool cloth under paragraph 288.

No. 39922.—Protest 763667 of F. B. Vandegrift & Co. (Philadelphia).

ASTRACHAN—PILE FABRICS.—Merchandise classified as a mohair pile fabric at 45 per cent ad valorem under paragraph 309, tariff act of 1913, is claimed dutiable as wool cloth at 35 per cent under paragraph 288.

Opinion by BROWN, G. A. The merchandise was found to be of the same character as the uncut pile fabrics or astrakhan passed upon in Knauth *v.* United States (6 Ct. Cust. Appls., 128; T. D. 35389) and held to be within the common meaning of the term "pile fabrics." Protest overruled.

No. 39923. Protests 762080, etc., of F. H. Shallus et al. (Baltimore, etc.).

CRYOLITE, SYNTHETIC.—Synthetic cryolite classified as a chemical compound under paragraph 5, tariff act of 1913, is claimed free of duty under the provision for cryolite in paragraph 468.

Opinion by BROWN, G. A. Synthetic cryolite was held free of duty under paragraph 468. G. A. 7840 (T. D. 36077) and Abstract 39182 followed.

No. 39924.—Protests 765887, etc., of C. Bischoff & Co. et al. (Boston and New York).

SODIUM SULPHATE, POWDERED.—Powdered sodium sulphate classified as a chemical compound at 15 per cent ad valorem under paragraph 5, tariff act of 1913, is claimed dutiable as "sulphate of soda crystallized, or Glauber salts," at $1 per ton under paragraph 67.

Opinion by BROWN, G. A. In G. A. 7864 (T. D. 36192) calcined sodium sulphate, powdered, was held not included in the provision of paragraph 67, but dutiable as a chemical compound under paragraph 5. Protests overruled.

BEFORE BOARD 3, JUNE 21, 1916.

No. 39925.—Protest 794980 of Sidney Blumenthal & Co. (New York).

COMMISSIONS—VALIDITY OF APPRAISEMENT.

WAITE, *General Appraiser:* Question here arises over two entries of spun silk yarn from Yokohama, Japan, the importers claiming that the collector has assessed duty upon too large an amount. The claim is set forth in the protest as follows:

We hereby protest against your decision, liquidation, and assessment of duties as made by you on our importations below mentioned, consisting of certain spun silk

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from Japan, * * * claiming that you have improperly included in the value of said merchandise a purchasing commission, which is nondutiable. In assessing duty according to value on said merchandise you should have only assessed duty upon the value of said merchandise exclusive of said purchasing commission.

We have not the invoices or entries before us. The records of reappraisement in both cases were introduced in evidence, and they are a transcript of the letters and figures found on the invoices. All parties interested seem to have conceded in the beginning that an appraisement was made by the local appraiser, and it appears from the record that the importers took an appeal from his appraisal to a single general appraiser. The return of the general appraiser shows that the appraisal made by the local appraiser was affirmed. In order that the importers may maintain their claim, it is necessary for them to show that the item of so-called commission was a commission paid by the purchasers to an agent serving them in the purchase, and that no valid appraisal was made by the appraiser and the single general appraiser. There was no appeal to a board of general appraisers. No testimony was introduced at the hearing. The importers rely upon a stipulation and the record to support their claim that the commission was a purchaser's commission. The consulated invoice has upon it a certificate of the agent wherein it is stated that he is agent of the purchaser. That fact being disputed, however, we do not think such statement can be accepted as proof of the fact. The record seems to reveal that neither the collector nor the appraiser felt called upon to pass upon that question. The stipulation referred to, upon which the case was submitted, recites:

It is hereby stipulated and agreed by and between the attorneys for the United States and protestants, Sidney Blumenthal & Co., that if a representative of Cornes & Co. was called and permitted to testify, he would state that Cornes & Co. were paid the commission as specified on the invoices involved in this protest, and that on all shipments of yarn from the mill of Fuji Gasu Spinning Co., Tokyo, Japan, the sales were made through Cornes & Co. and the commission, as stated on said invoices, paid to them.

Cornes & Co. are the alleged commissionaires in the transaction. We note that the stipulation recites that all shipments of yarn from the mill of the seller in this case were made through Cornes & Co. This is entirely consistent with the theory that they were the agents of the seller. Had they been the agents of the purchasers, the natural way would have been to have stated that they were purchased through such agents. It is not unusual that the seller pays a commission to one serving him in handling all of his goods, in which case the commission is added to the purchase price and is paid as a part of the purchase price of the goods by the purchaser, thus being dutiable as entering into the market price of the goods. We are therefore of the opinion that there is not enough in the record or stipulation to prove the fact that Cornes & Co. were the agents of the purchasers and that they received their compensation from them. As stated before, there was no testimony showing that they were the agents of the purchasers. Had such been the fact, it would have been a simple matter to have made such proof.

The stipulation recites further:

That on both these entries the importer called for a reappraisement and the cases were submitted for decision without the introduction of any evidence before the single general appraiser and that a copy of the letter submitting them for decision is as follows:

JULY 15, 1915.

BOARD OF GENERAL APPRAISERS,
641 Washington Street, New York City.

SIRS: I inclose herewith notice of appearance in reappraisements 81081, 81442/4, all of which are set for hearing before General Appraiser Howell on July 19. In view of the fact that these reappraisements involve the question of inland freight which has been decided adversely to the importer, we therefore submit the same.

Counsel for the importers contends that a mistake was made in submitting the cases now at bar, claiming that the question of inland freight was not involved in

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these, and they were therefore inadvertently submitted. We can not see, however, how that makes any difference in the case. Such error can not be now remedied under protest. If the importers were entitled to relief because of such error, a rehearing should have been asked for or a motion made to set aside the submission. The appraiser's action was regular.

The next question for consideration, then, is as to whether there was a valid appraisal and reappraisal of the goods. The record made by the local appraiser is meager, as is often the case. The record should be made in clear and concise language, showing just what the appraiser did. In the case at bar, however, the appraiser seems to have marked certain items on the invoice with the letter "D" and some with the letters "N D." We think there can be no question but that these letters are generally understood to mean "Dutiable" and "Not dutiable." The items of commission, in one case 151.74 yen and in the other 119.30 yen, are marked "D;" so also is the packing; while such items as hauling and shipping, marine insurance, consul's fees, and freight are marked "N D." The items of commission, however, in each case have been transferred to the appraised column, while the other items have not, whether dutiable or not. Aside from this, it was the duty of the local appraiser to make an appraisal, and we must presume that he did so. The importers evidently considered that an appraisal was made by the local appraiser because they took an appeal to the single general appraiser. The single general appraiser treated it as an appraisal and sustained the finding of the local appraiser. The law with reference to the appraisal and dutiable character of charges and purchasing commissions was well established at the time these entries were made, and we can not assume, in the face of the fact that every officer is presumed to do his duty, that they have so far departed from that course in these cases as to make no appraisal, or to assume to appraise those items which are clearly nondutiable. The fact that the items or amounts called commission in these invoices correspond to the advances made by the local and general appraiser to the per se value of the goods, is not evidence, in the absence of testimony, that they assumed to add such amounts to the dutiable value without regard to the market value, in the absence of testimony as to what the market value was. There was no proof, as stated before, as to what the market value of these goods was in the country in which they were purchased. In fact, there is nothing besides the appraised value except the figures on the invoices. In our view of this case, it was the duty of the importers, if they were dissatisfied with the finding of the single general appraiser, to have appealed to the board of three general appraisers and there given proof as to the market value of the goods. In the absence of anything to the contrary except what appears in the record, we conclude there was a valid appraisement, which was binding upon the collector, and he had no choice but to assess duty upon the amounts fixed by said appraisement, which in these cases include the several items of 151.74 yen and 119.30 yen.

It must be borne in mind that the question whether the item of commission was a dutiable or nondutiable item was not presented to the appraising officers; in fact, was not such a question as could appropriately be presented to them, as questions of that kind have to be determined upon protest filed. Hence, whatever use the appraising officers have made of the items above enumerated, we conclude must have been in the way of an appraisal, such amounts being added to the invoice value of the goods in pursuance of their duty to appraise the merchandise. Note G. A. 7785 (T. D. 35766) and G. A. 7871 (T. D. 36219).

The protest is overruled.

No. 39926.—Protest 785019 of A. A. Vantine & Co. (New York).

FUEL FOR FOOT WARMERS.—Fuel for foot warmers classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, is claimed free of duty under various paragraphs.

Opinion by HAY, G. A. Protest unsupported; overruled.

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BEFORE BOARD 1, JUNE 23, 1916.

No. 39927.—Protest 769302 of J. Friedenberg & Co. (New York).

MAGNETS—TOYS.—Magnets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

SULLIVAN, *General Appraiser:* * * * In many prior decisions we have quoted the Court of Customs Appeals' definition of toys in the Illfelder case (1 Ct. Cust. Appls., 109, 111; T. D. 31115). We deem it advantageous to reiterate that definition:

> In common speech, and as popularly understood, a toy is essentially a plaything, something which is intended and designed for the amusement of children only, and which by its very nature and character is *reasonably* fitted for no other purpose. Although an article may be chiefly used for the amusement of children, if its nature and character are such that it is also reasonably fitted for the amusement of adults, or if it is reasonably capable of use for some practicable purpose other than the amusement of children, it can not be classed as a toy unless it is affirmatively shown by the importer that it is so known and designated by the trade generally.

In this case we have proof that these magnets are used for ascertaining the material of metal articles and for picking up small articles, such as pins or small screws, and have a practical utilitarian use. Therefore, even though they may be used as playthings by children, they are *reasonably* fitted for other purposes.

The proof does not establish that these magnets are known and designated as toys by the trade generally.

We see no reason for departing from our holding in the Friedenberg case (Abstract 39035) that the merchandise is more aptly classifiable as manufactures of metal under the last clause of paragraph 167 than as toys under paragraph 342.

The protest is sustained, and the decision of the collector reversed.

No. 39928.—Protest 769885-55307 of Marshall Field & Co. (Chicago).

PARTS OF JEWELRY—IMITATION JET.—Merchandise invoiced as jet pendant ornaments, classified as parts of jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed dutiable at 30 per cent under paragraph 95, or at 20 per cent under paragraph 167.

SULLIVAN, *General Appraiser*: * * * The official samples are composed of drop-shaped faceted pieces of black glass or paste, having a metal cap at one end, to which is attached a metal ring by which they can be suspended. They are about an inch and a quarter long, and a little over a quarter of an inch in thickness at their widest points.

At the hearing the examiner who passed this merchandise stated that it is generally known as imitation jet; that it is suitable to be used in the manufacture of jewelry; that it might be used as ornaments; that it is not a complete piece of jewelry, and could not be used in its present condition. There is no proof as to the component material of chief value—whether of glass or paste or metal.

There is no provision in the tariff act of 1913 for parts of jewelry. There is, however, a provision in the last clause of paragraph 356 for "materials of metal, whether or not set with glass or paste, finished or partly finished, * * * suitable for use in the manufacture of any of the foregoing articles in this paragraph," viz, "jewelry, * * * valued above 20 cents per dozen pieces," in the first clause thereof.

The Court of Customs Appeals has held in Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) that "parts of jewelry" are dutiable under that provision at 50 per cent ad valorem. It seems to us, therefore, that this merchandise should have been so assessed with duty; but this claim is not made in the protest.

In their brief the protestants contend that articles of imitation jet are not commonly or commercially known as jewelry, and cite the Beierle case (1 Ct. Cust. Appls., 457; T. D. 31506). In that case there was no testimony whatsoever in the record "going to show, or finding by the board, that the articles * * * under consideration,

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* * * in chief value of imitation jet, were by the trade and commerce of the United States uniformly and commonly known as jewelry." In the case at bar we have the collector's decision that the merchandise is parts of jewelry, which, being uncontradicted, may be taken as proved, coupled with the examiner's testimony that it is suitable to be used in the manufacture of jewelry.

In addition, as before stated, the protestants did not introduce any testimony as to the component material of chief value in the merchandise, so that even if it were not jewelry we could not sustain the protest.

Under the circumstances we overrule the protest, without, however, acquiescing in the collector's decision.

No. 89929.—Protests 781774, etc., of China America Importing Co. (New York).

TISSUE-PAPER HATS—CANDY BASKETS—TOYS.—Hats in chief value of tissue paper and small colored baskets, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as articles in chief value of tissue paper at 30 per cent under paragraph 323 and as baskets at 15 per cent under paragraph 176.

Opinion by SULLIVAN, G. A. On the authority of Abstract 38875 the paper hats were held dutiable as articles in chief value of tissue paper under paragraph 323. The baskets were held dutiable under paragraph 175. Protests overruled as to the latter articles, however, that claim not having been made.

No. 89930.—Protests 404670, etc., of G. Collamore & Co., 405965, etc., of Higgins & Seiter, 432789, etc., of Koscherak Bros., 526553, etc., of Julius Palme, and 417558, etc., of James M. Shaw & Co. (New York), and protests 404700, etc., of Graham & Zenger et al. (New York, etc.).

STEM WARE.—Stem ware classified as articles composed wholly or in chief value of blown glass is claimed dutiable as manufactures of glass at 45 per cent ad valorem under paragraph 109, tariff act of 1909, and 30 per cent under paragraph 95, tariff act of 1913.

Opinions by SULLIVAN, G. A. Upon stipulation of counsel the stem ware in question was held dutiable under paragraph 109, tariff act of 1909, and paragraph 95, tariff act of 1913. United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457) followed.

No. 89931.—Protests 760062, etc., of Joseph Personeni et al. (New York).

CHEMICAL AND MEDICINAL COMPOUNDS.—Merchandise reported by the appraiser to be calcined magnesia, citrate of magnesia, cathartic salts, metol, ortol, amudol, adurol, and similar chemical compounds, Loeflund's malt soup stock, malt extract containing calcium, food maltose, and other medicinal and chemical compounds, classified at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable at lower rates under various paragraphs.

Opinion by BROWN, G. A. In the absence of evidence the merchandise was held properly classified under paragraph 17. Britt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36428), affirming G. A. 7832 (T. D. 36030), and G. A. 7833 (T. D. 36031) cited.

(T. D. 36529.)

Copper matte.

Appeal directed from decision of the Board of United States General Appraisers of May 23, 1916, G. A. 7911 (T. D. 36439), involving the classification of certain so-called copper matte.

TREASURY DEPARTMENT, *June 26, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 21st instant, inviting attention to the decision of the Board of United

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wherein certain so-called copper matte which had been assessed with duty at three-fourths of a cent per pound upon the lead contained therein under paragraph 152 of the tariff act of October 3, 1913, was held by the board to be free of duty as regulus of copper under paragraph 461 of the said act.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(90419.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36530.)

Immediate transportation port.

Jacksonville, Fla., made an immediate transportation port under the act of 1880.

TREASURY DEPARTMENT, *June 26, 1916.*

To officers of the customs and others:

The appended act of Congress, approved June 16, 1916, is published for the information and guidance of all concerned.

(93001–49.) ANDREW J. PETERS, *Assistant Secretary.*

AN ACT To amend an Act entitled "An Act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," approved June tenth, eighteen hundred and eighty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the privileges of the first section of the act approved June tenth, eighteen hundred and eighty, entitled "An act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," be, and the same are hereby, extended to the port of Jacksonville, Florida.

Approved, June 16, 1916.

(T. D. 36531.)

Immediate transportation port.

Winston-Salem, N. C., created an immediate transportation port under the act of 1880.

TREASURY DEPARTMENT, *June 26, 1916.*

To officers of the customs and others:

The appended act of Congress, approved June 16, 1916, is published for the information and guidance of all concerned.

(90740–15.) ANDREW J. PETERS, *Assistant Secretary.*

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AN ACT for the establishment of Winston-Salem, in the State of North Carolina, as a port of delivery under the act of June tenth, eighteen hundred and eighty, governing the immediate transportation without appraisement of dutiable merchandise.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the privileges of the seventh section of the act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and are hereby, extended to the port of Winston-Salem, in the State of North Carolina.

Approved, June 16, 1916.

(T. D. 36532.)

Plant quarantine act—Unclaimed nursery stock.

T. D. 34151 amended so as to permit, in certain cases, the selling of unclaimed nursery stock without certification by an officer of the Department of Agriculture.

TREASURY DEPARTMENT, *June 28, 1916.*

To collectors and other officers of the customs:

In accordance with a recommendation of the Secretary of Agriculture, you are instructed that unclaimed nursery stock may be sold without the certificate of an officer of the Department of Agriculture provided for in T. D. 34151 of February 6, 1914, where the collector shall find (1) that a permit has been issued by the Department of Agriculture for the nursery stock; (2) that foreign certificates of inspection are attached to the containers; and (3) that the latter are plainly marked to show the general nature and quantity of the contents, the name and address of the exporter, the name and address of the consignee, and the country and locality where the stock was grown.

Collectors are further instructed to render full reports, both to the Department of Agriculture and to the State inspector concerned, on the forms prepared by the Department of Agriculture and now used by importers or brokers in reporting shipments of imported nursery stock of all nursery stock disposed of in this manner.

Unclaimed nursery stock not complying with the requirements mentioned herein should be destroyed by burning, under customs supervision.

T. D. 34151 is hereby amended accordingly.

(92655-19.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 36533.)

Indigoids—Dyes obtained from indigo.

Appeal directed from decision of the Board of United States General Appraisers of May 31, 1916, G. A. 7914 (T. D. 36450), involving the classification of certain so-called indigoids.

TREASURY DEPARTMENT, *June 28, 1916.*

SIR: I have to acknowledge receipt of your letter of the 21st instant, inviting attention to the decision of the Board of United States Gen-

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eral Appraisers of May 31, 1916, G. A. 7914 (T. D. 36450), involving the classification of certain so-called indigoids, such as thioindigo red, thioindigo scarlet, etc.

The merchandise in question, it appears, consisted of synthetic compounds or dyes of coal-tar origin produced from the same basis as indigo, but not made from indigo itself. It was assessed with duty at the rate of 30 per cent ad valorem under paragraph 20 of the tariff act of October 3, 1913, as coal-tar colors or dyes not specially provided for, but was held by the board to be free of duty under the provisions of paragraph 514 of the said act for "indigo, natural or synthetic, dry or suspended in water, and dyes obtained from indigo."

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(104297.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 36534.)

Zinc ore—Appraisement entry.

Entry by appraisement of zinc ore may be permitted on application made on Cat. No. 3281 or request stamped on face of entry.

TREASURY DEPARTMENT, *June 29, 1916.*

SIR: The department is in receipt of letters relative to entry by appraisement of zinc ore under the authority given to collectors in T. D. 36446. From these letters it appears that you are in doubt as to the proper procedure.

You are advised that when application is made for entry by appraisement on customs Cat. No. 3281 of zinc ores, the application should be accompanied by an invoice and an entry on the regular form, but without the declaration required on a regular entry. The warehouse bond should be taken in the same manner as if a regular entry were filed and the penalty based on the invoice value and description of the ores.

Upon the return of the appraiser the entry should be liquidated on the appraised value and the amount of the ascertained duty charged on the bond.

In lieu of an application on Cat. No. 3281, the importer may stamp on the face of the entry, "Application is hereby made for entry by

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appraisement under authority of T. D. 36446," and the procedure will then be the same as if the formal application were filed.

Respectfully, ANDREW J. PETERS,
(101088.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *St. Louis, Mo.*

(T. D. 36535.)

[Circular No. 59.]

Absence of employees under military service.

TREASURY DEPARTMENT, *June 29, 1916.*

To officers and employees of the Treasury Department:

Under a decision of the Comptroller of the Treasury of June 28, 1916, employees of this department who are members of the Organized Militia or National Guard and have been called out by order of the President of June 18, 1916, or who may be drafted into the service for actual military duty, may be paid their regular salaries as Treasury Department officers or employees for such period prior to their actual muster into the military service of the United States as would be covered by annual leave granted to them under existing law as embodied in departmental regulations. And even after actual muster into the service of the United States *enlisted men* may continue to receive pay as officers or employees of the department until the expiration of the leave granted, provided the combined pay of the military and civil positions does not exceed $2,000 per annum, which would be prohibited under the provisions of section 6 of the act of May 10, 1916 (Pub. No. 73).

Employees absent on military duty whose salaries are paid from lump-sum appropriations may be carried on the rolls of the Treasury Department in a nonpay status after the expiration of annual leave granted as above, subject to the continuance of such appropriations by Congress.

The department has been notified by the Civil Service Commission that when it is desired to fill a vacancy resulting from the absence of a competitive classified employee, who, as a member of the Organized Militia or National Guard, is called for active military duty in the service of the United States, the commission will authorize the filling of such vacancy temporarily from the eligible registers for temporary appointment pending the return and reinstatement of such classified employee; and that in the event that the absence of such employee should continue for more than a year, the period of eligibility for reinstatement under the rules, the commission will recommend to the President that this period be extended to permit the reinstatement of any such person.

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Accordingly, when it becomes necessary to fill a vacancy resulting from the absence of an employee on military duty, a temporary appointment, as provided above, will be made in accordance with the arrangements of the Civil Service Commission, and if the vacancy to be filled is above the entrance grade, and it is deemed to be in the interests of the service to do so, temporary promotions may be made, the appointee from the civil-service register being employed at the lower grade. In order to effect the reinstatement of an employee whose position has been filled temporarily, upon his return the temporary appointee will be dropped from the service and if temporary promotions have been made the employees so promoted will be restored to their former grades.

W. G. McAdoo, *Secretary of the Treasury.*

(T. D. 36536—G. A. 7926.)

Powdered tin—Bronze powder.

Powdered tin, so bought and sold in the trade and commerce of this country and used as a coating to be applied to paper intended for wrapping articles to render them secure against atmospheric conditions, is not dutiable as bronze powder under paragraph 146 of the act of 1913, as classified by the collector, but is rather dutiable under paragraph 167 of said act as a manufacture of metal not specially provided for, as claimed by the importers.

United States General Appraisers, New York, June 26, 1916.

In the matter of protest 785241 of Kupfer Bros. Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Strauss & Hedges (*John Frances Strauss* of counsel) for the importers.

Bert Hanson, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (Fischer, Howell, and Cooper, General Appraisers; Cooper, G. A., not participating).

Fischer, *General Appraiser:* The merchandise in question consists of powdered tin returned advisorily by the appraiser as "powdered tin as bronze powder." Duty was levied thereon at the rate of 25 per cent ad valorem under the following provision in paragraph 146 of the act of 1913:

Bronze powder, brocades, flitters, and metallics; bronze, or Dutch-metal or aluminum, in leaf, * * *.

In the protest it is alternatively claimed that said articles are properly dutiable at either 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for, or at 10 per cent ad valorem under paragraph 154 of said act as

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or at 15 per cent ad valorem under paragraph 385 of said act as nonenumerated manufactured articles.

The fact that the testimony introduced on behalf of the importers, and which is uncontradicted, shows that the article is definitely known and recognized in the trade and commerce of this country as powdered tin and not as bronze powder, presents for determination here this question, Under what paragraph of the tariff is this particular merchandise classifiable? Surely, in its present powdered state it can not be treated as tin, as that term is commercially known and understood. It is more than mere tin; it is clearly a finished article composed of tin and bought and sold under the name of "powdered tin." Likewise, it differs radically from tin in the use for which it is employed—as a coating to be applied to paper intended for wrapping articles to secure for them protection against atmospheric conditions.

Counsel for the Government invites attention of the board to its ruling in Abstract 29797 (T. D. 32830), wherein an article similar to that here under consideration was passed upon and held to be properly classifiable as a metal, unwrought. In that case, however, the record disclosed the fact that while the collector assessed duty upon the merchandise as metal, unwrought, the importers claimed it to have been properly dutiable either as tin, or ore, or tin granulated; or as a nonenumerated manufactured article. The board overruled all claims and sustained the collector's decision, on the ground that the paragraph under which the article was classified was more specific than any named in the protest.

Moreover, in the case of United States *v.* Wells (1 Ct. Cust. Appls., 158, 163; T. D. 31211), Judge De Vries, speaking for the court, thus distinguished a wrought from an unwrought or unmanufactured article:

> We do not believe that the necessary coincident condition to that of being "unlabored," "rough," or "crude," or "not worked up," the synonyms of "unwrought," is solely that the article be in such concrete form as by application of the hammer or other direct process will advance it into a different article or condition.

It is apparent that in the case at bar the article, as a result of some direct process, has been converted from the ordinary tin of commerce into a new article with a new name and use. It is accordingly a manufactured article composed of metal, and, not being otherwise specially provided for, it is relegated for tariff classification to the general provision for manufactures of metal not specially provided for in paragraph 167 of the present tariff act and is dutiable thereunder at the rate of 20 per cent ad valorem. That claim in the protest is therefore sustained and the decision of the collector is modified accordingly.

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(T. D. 36537—G. A. 7927.)

Perilla oil.

NUTS AND SEEDS DISTINGUISHED.

The fruit of the perilla plant, having the essential characteristics of a nut, is a nut rather than a seed. Oil expressed therefrom held to be nut oil entitled to entry free of duty under paragraph 639, tariff act of 1909.

United States General Appraisers, New York, June 26, 1916.

In the matter of protest 692385 of S. L. Jones & Co. against the assessment of duty by the collector of customs at the port of San Francisco.

[Reversed.]

P. C. Denroche for the importers.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise in question is described in the special report of the appraiser as "perilla oil expressed from the seed of the *Perilla ocymoides* or *Nankinensis*." The collector assessed it with duty at the rate of 25 per cent ad valorem under paragraph 3 of the tariff act of 1909. Protestants claim that free entry should have been allowed under paragraph 639 of said act.

The issue turns upon whether the oil is expressed from *seed* or from *nuts*, and thus the question presents itself whether the fruit of the perilla plant (if it may be so called) is a seed or a nut.

In December, 1914, a decision (Abstract 37083) was rendered in this case adversely to the importers, but subsequently an application for rehearing was granted and the case restored to the San Francisco docket. At such rehearing, Dr. H. M. Hall, assistant professor of botany at the University of California, being called by protestants, testified:

Q. Doctor, can you tell us the difference between a seed and a nut, what constitutes a seed and what constitutes a nut?—A. Yes, I can tell the difference.

Q. What constitutes a nut?—A. A nut is the fruit of a compound ovary; that will cover it.

Q. What constitutes a seed?—A. A seed is a fertilized ovule, which is part of an ovary.

Q. With the perilla plant can you tell, from this sample, whether it is a nut or a seed.—A. I can't answer that; yes.

Q. Can you tell whether this is a nut or whether it is a seed; from your examination can you tell if this is a nut or a seed, which it represents?—A. Speaking as a botanist it is neither, if that is satisfactory.

Q. What would you call it then?—A. A nutlet.

* * * * * * *

Q. What is the difference between a nut and a nutlet?—A. A nutlet is defined by Hester Gray, who is our leading authority. as a small nut.

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Q. Doctor, every nut has an endocarp, has it not?—A. Yes.

Q. Every nut has an endosperm?—A. I am not sure about that.

Q. Every nut has a pericarp, hasn't it?—A. Yes.

Q. Looking at the illustrative exhibit, Doctor, wherein do you find those characteristics in this illustrative exhibit?—A. That is the pericarp and the endocarp?

Q. Yes.—A. The material is too small to demonstrate the nut in its various parts, but the pericarp is the outer portion which breaks off and the inner portion would be called the endocarp.

Q. Have you ever taken that particular article and gone through that experiment with it?—A. I have broken off the pericarp, yes.

Dr. Fred West, official chemist in the laboratory of the United States appraiser's office at the port of San Francisco, called by the Government, expressed the view that a nut is a fruit in which the pericarp or outer part is sufficiently hard to make it self-sustaining and in which the reproductive powers have been obliterated or aborted, while a seed differs in that it does not have the harder pericarp, but does possess the powers of reproduction or the ability to reproduce itself. It is at least doubtful whether this distinction between a nut and a seed is warranted. That there is a large variety of nuts which, by reason of age or processes of preparation to fit them for edible purposes, lose the powers of reproduction is not to be denied, but neither is it to be questioned that nuts having the hardest kinds of pericarp possess the powers of reproduction. How else are the walnut tree, the hickory tree, the oak, and almost innumerable kindred trees reproduced? The nuts of these trees each contain the seed, and we are of the opinion that the same is true of the nut of the perilla plant. The fact that it is small can not influence the determination of whether it is a seed rather than a nut. Dr. Hall in his examination of it had no difficulty in discovering the pericarp, which distinguishes it from what is scientifically known as seed, and this would seem to warrant the conclusion that the oil expressed therefrom is nut oil, and as the term "nut oil" as used in paragraph 639, *supra*, is narrower and therefore more specific than the term "expressed oils" as used in paragraph 3 we conclude that the collector's assessment was erroneously made and that the protest should be sustained.

(T. D. 36538—G. A. 7928.)

Pencils.

Pencils composed of a high quality of cedar, metal, and lead or crayon, in form round, hexagonal, or octagonal, polished by hand, colored and imprinted, used by architects, engineers, draftsmen, artists, and illustrators, and shown to be in chief value of metal, *held* dutiable at 20 per cent ad valorem under paragraph 167, tariff act of 1913.—United States *v.* American Bead Co. (7 Ct. Cust Appls., —; T. D. 36456) and G. A. 4783 (T. D. 22558) cited.

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SULLIVAN, G. A., dissenting: The pencils in question should be held dutiable under paragraph 356, being *designed* to be worn on apparel or carried on or about or attached to the person, and having all the other requisites for classification under the third clause of that paragraph.

United States General Appraisers, New York, June 26, 1916.

In the matter of protests 750355, etc., of A. W. Faber against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

J. W. Hampton, jr., & Co. (*Walter E. Hampton* of counsel) for the importer.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers; BROWN, G. A., concurring; SULLIVAN, G. A., dissenting).

MCCLELLAND, *General Appraiser:* The merchandise here involved consists of pencils in chief value of metal. They were assessed with duty at the rate of 60 per cent ad valorem under paragraph 356 of the tariff act of 1913, and are claimed to be properly dutiable at 36 cents per gross, or 25 per cent ad valorem, under paragraph 378, or in the alternative at 20 per cent or 50 per cent under paragraph 167, 15 per cent under paragraph 176, or 10 or 15 per cent under paragraph 385 of said act.

The pencils are shown by the official samples to be beyond question articles of utility. The witness Fera testifies that they are composed of a very high quality of cedar, metal, and lead or crayon. They are made either round, hexagonal, or octagonal, and are then polished by hand, colored, and imprinted. This witness, testifying as to the uses of such pencils, says:

I know that the pencils are used primarily as artists' pencils; they are used very extensively by architects and engineers of all sorts, civil engineers, mechanical engineers, draftsmen, by artists, illustrators, and so on.

The witness Wanamaker testified that he had seen the pencils used for marking packages, and also by artists, designers, illustrators, architects, and engineers.

There is nothing about any of these pencils to indicate that they are designed to be carried on or about the person any more than there is about the ordinary lead pencil of wood. It may be that such pencils are occasionally used for marking packages and that they are or may be carried, as are ordinary lead pencils, in the pockets of the users; but these facts alone would not justify their assessment with duty at the 60 per cent rate under paragraph 356, *supra*.

In United States *v.* American Bead Co. (suit 1643, 7 Ct. Cust. Appls., —, T. D. 36456) the issue was whether rosaries in chief value of metal were subject to such 60 per cent rate as articles designed to be worn on or about the person. Judge Smith, writing for the court, said:

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not specifically enumerated are not within the paragraph unless they are like the enumerated articles and are designed to be worn and carried in the same way. The rosaries here involved are not enumerated. They are not intended to be worn on the apparel as are buckles, pins, collar buttons, cuff buttons, dress buttons, and millinery and military ornaments. Neither are they suitable to be carried on or attached to the person as are chains, hair combs, and hair ornaments. They are, it is true, susceptible of being carried on or about the person, but it can hardly be said of them that they were designed or made for that purpose. Rosaries of the kind under consideration are used in the church and the home and that use of them does not require them to be carried on or about the person in the same manner as are card cases, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, match boxes, mesh bags, purses, powder cases, stamp cases, and vanity cases. Articles of the class last named are carried on the person in order that they may be available for instant use, while the rosaries in controversy are not carried for immediate use, but for the purpose of transferring them from one place of use to another. Moreover, the rosaries bear no resemblance whatever, we think, to any of the articles enumerated in the tariff provision under which they were assessed for duty. Buckles, pins, collar buttons, cuff buttons, dress buttons, and millinery and military ornaments are intended to be worn on the apparel, and it is obvious that such things have nothing in common with the goods under discussion. The use for which the rosaries are intended and to which they are put radically distinguishes them from chains, hair combs, and hair ornaments. Card cases, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, match boxes, mesh bags, purses, powder boxes, stamp cases, and vanity cases designed to be carried on or about the person, are intended for the comfort, pleasure, convenience, or care of the person, and with them rosaries, which minister to the spiritual rather than the physical nature, can scarcely be compared. See also United States *v.* Sussfeld, Lorsch & Co. (suit 1695, 7 Ct. Cust. Appls, —; T. D. 36454.)

What the court says of the rosaries not being designed to be carried on or about the person is at least equally true of these pencils. There is nothing ornamental about them and there could be no purpose in carrying them on or about the person, except as there might be in carrying any other article of utility. It might as well be said that the ordinary foot rule, which house carpenters ordinarily carry in their pockets, is designed to be carried on or about the person. It requires but a casual examination to show that these pencils are not designed for the uses to which the ordinary pencils of wood are put, and in so far as they are used by artists, architects, and designers they might with propriety be designated as their tools of trade. In G. A. 4783 (T. D. 22558) drawings executed by an architect and used in his business were held to be tools of trade, Judge De Vries, for the board, saying:

We find that the articles in question are implements or tools of trade peculiar to the rade or profession of the importer and adapted to the "particular uses" of such profession, and are, therefore, properly classifiable as such.

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If such is the law as to drawings of an architect, why ought not the same rule apply to the architects' pencils specially prepared for and used in making such drawings?

As already stated, these pencils are not designed to be carried on or about the person, and therefore, it being conceded that they are in chief value of metal, the protest claims for duty at 20 per cent ad valorem under paragraph 167 should be sustained.

No evidence having been offered in support of the issue in protest 767483 involving the 5 per cent discount of duties under subsection 7 of paragraph J of section 4 of said tariff act the claim in respect thereof is hereby overruled.

BROWN, *General Appraiser:* I concur in the conclusion reached by Judge McClelland in this case.

DISSENTING OPINION.

SULLIVAN, *General Appraiser:* I can not agree with the conclusions of fact or law arrived at by my associates in the foregoing cause, and wish briefly to assign my reasons for dissenting.

It is established by the record the merchandise consists of lead pencils of different sizes and shapes, some being square, others round, others octagonal, and that they have all one purpose—use as a lead pencil. They may be characterized as "prorepel," for the reason that the lead can be retained in the barrel of the pencil when carried in the pocket without in any way soiling the clothes and propelled or projected when needed for use.

Many are of the same size as the ordinary wooden lead pencil commonly used by every professional and business man; others are larger and are claimed to be used for checking bills and by artists; but why a discrimination should be made of the same pencil used by an artist when used by the business or professional man I can not appreciate.

That they are *designed* to be carried on or about the person is unquestioned; that they are thus carried is entirely immaterial.

The statute declares in clear and unequivocal terms that "articles valued above 20 cents per dozen pieces, designed to be worn on apparel or carried on or about or attached to the person," if within the other provisions of paragraph 356, shall be dutiable at 60 per cent ad valorem. That they come within that description can not be gainsaid, is not controverted, and can not be, from the facts.

The majority opinion states:

> There is nothing about any of these pencils to indicate that they are designed to be carried on or about the person any more than there is about the ordinary lead pencil of wood.

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That is a fact; but the ordinary lead pencil of wood is *designed* to be carried on or about or attached to the person. The fact of carrying is not a requisite to bring merchandise within the rule established, and these pencils, whether of wood or steel, are designed by shape and size to be so carried.

The majority opinion cited United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456), the issue in that case being whether rosaries in chief value of metal were subject to the 60 per cent rate as articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person. After setting out a portion of the opinion of Judge Smith in that case the board states:

> What the court says of the rosaries not being designed to be carried on or about the person is at least equally true of these pencils. There is nothing ornamental about them and there could be no purpose in carrying them on or about the person, except as there might be in carrying any other article of utility.

I can not understand why the majority should compare rosaries, as to use, with lead pencils. A rosary may be carried about the person, but the proof in that case was that it was not designed for that purpose, and therefore it was properly held dutiable as a manufacture of metal. Yet in a subsequent decision—United States *v.* Malhami (7 Ct. Cust. Appls., —; T. D. 36493)—the same court, passing upon the same article, to wit, a rosary, declared:

> The appraiser reported the articles involved in one of the protests to be "rosaries designed to be worn on apparel or carried on or about or attached to the person, composed wholly or in chief value of metal, or of metal set with precious, semiprecious, or imitation precious stones, pearls or imitation pearls, cameos, coral, or amber, valued above 20 cents per dozen pieces."

As against that statement of the appraiser it is true evidence was not offered, and in sustaining the protest the board exercised its knowledge, which in this case the majority are seeking to exercise, in conformity with previous holdings; but the Court of Customs Appeals took a different view, not alone upon the fact that the record was without testimony, but upon general knowledge, and after setting forth definitions found in the dictionary as to the meaning of the word rosary, not written for any specific case, declared:

> It will be observed that each of the foregoing definitions of rosaries states that there are some rosaries which are carried upon the person either for ornament or for mere personal convenience by way of occupying the fingers. The definitions are sufficient authority for the conclusion that within common knowledge some articles bearing the name of rosaries are worn upon the person for mere personal convenience and adornment. This conclusion finds additional support in the statement made by the appraiser that some of the present articles are set with precious or semiprecious stones, or with imitations thereof. In the face of the foregoing definitions and of the appraiser's reports, we do not feel authorized to say that articles bearing the name of rosaries are "always carried in some hidden receptacle, such as the pocket, reticule, or prayer book, and are only used during prayers."

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Rosaries used for convenience or personal adornment are not rosaries, and the facts in the case at bar are adverse to the conclusion that these pencils must be classified the same as the rosaries in the American Bead case, *supra*.

In Gallagher *v.* United States (6 Ct. Cust. Appls., 105; T. D. 35343), in which the court affirmed the action of the board in holding that prorepel pencils distinctly of the character of those under discussion were within the provisions of paragraph 356, the court states:

A comparison of the two corresponding paragraphs (448 of the act of 1909 and 356 of the act of 1913) will disclose the fact that the provisions of the latter are more general and comprehensive in character than the former, and while it is true that the present pencils are not specifically enumerated in the paragraph, they nevertheless fall within the descriptive terms contained therein, and therefore should be classified under the provision for unenumerated "like articles" which follows the list of enumerated ones in the paragraph.

No attempt has been made in the majority opinion to discriminate between the Gallagher case, *supra*, and the present.

A later expression of the court in regard to this paragraph is found in Bischoff *v.* United States (7 Ct. Cust. Appls., —; T. D. 36458), in which the action of the board was affirmed. The merchandise in that case was known as cigar lighters, and the board held that they were within the specific provision of paragraph 356. It was contended by the protestant that cigar lighters were specifically enumerated in paragraph 381 under the head of "smokers' articles," and that they should be classified under that paragraph instead of 356. In passing thereon the court states:

Paragraph 381 indicates that it is designed to cover pipes and smokers' articles and to include "all smokers' articles whatsoever not specially provided for," and is to include cigarette books, cigarette-book covers, and various other things therein enumerated. This paragraph is a reenactment, so far as affects any issue here, of paragraphs 459 and 475 of the tariff acts of 1897 and 1909, respectively.

In holding that cigar lighters were not within the specific provisions of paragraph 381, the court states:

Paragraph 356 does not contain the n. s. p. f. provision. It is commonly referred to as the jewelry paragraph, but manifestly includes things not strictly such. The clause particularly under consideration here enumerates, with the introduction "such as and including," many articles that promote the comfort or convenience of the person, the principal purpose of some of which may be adornment with some degree of utility, while in others the utilitarian purpose is predominant and adornment subsidiary, all, however, possessing the characteristic of jewelry, in that they are carried on or about or attached to the person. * * *

* * * Then, however, one would be confronted with the fact that the provision in paragraph 356 is really a legislative act of a date later than paragraph 381, because paragraph 381 is a reenactment of earlier statutes, while paragraph 356 is the first enactment of its particular kind. It relates to some of the articles covered by paragraph 381, and therefore requires the presumption that Congress had in mind that

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the theretofore adjudicated scope of the latter paragraph would result in removing from paragraph 381 the smokers' articles *eo nomine* mentioned in paragraph 356 and requires consideration as to whether the force of the term "like articles" therein did not describe these cigar lighters with a specificity at least equal to the intensified expression of paragraph 381.

How can a prorepel lead pencil be classified under paragraph 356 and a pencil having a metal tip and blue lead be outside of the paragraph and classifiable under another paragraph? It is playing with words, and contrary to the intent of the statute.

The protest should be overruled.

(T. D. 36539—G. A. 7929.)

Books of music—Books printed in foreign language.

Books which contain in addition to the notes of the music a considerable amount of text printed in a language other than English, the printed text constituting a very significant and important feature of the work, are properly classifiable as "books * * * printed wholly or chiefly in languages other than English," and as such free of duty under paragraph 426 of the act of 1913, as claimed by the importers, rather than dutiable at the rate of 15 per cent ad valorem under paragraph 329 of said act as "music in books or sheets," as classified by the collector.

United States General Appraisers, New York, June 26, 1916.

In the matter of protest 300853 of Societa Libraria Italiana against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Importers not represented by counsel.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise in question consists of music in books and in sheets. Duty was levied thereon at the rate of 15 per cent ad valorem under the provision in paragraph 329 of the act of 1913 for "music in books or sheets." It is claimed that said merchandise is properly entitled to free entry under the provision in paragraph 426 of said act for "books * * * printed wholly or chiefly in languages other than English."

The consular invoice does not itemize or give the separate value, of any of the articles purported to be covered by the protest, and merely refers to them as "music in Italian," with an aggregate value of 457 lire. The appraiser, however, in his advisory classification of the merchandise, made the following notation on the invoice:

	Lire.
Music, 15 per cent, value	410.15
Books, foreign language, free, paragraph 426	46.85

The record discloses that the appraiser in arriving at this division of value had before him not only an individual sample of each of the different articles in question but also the importers' private invoice, containing a list of the various articles and their respective values. Both this list and the samples of the merchandise have been duly offered and received in evidence herein and now properly form part of the record in the case.

Of the sample books so submitted we find that four of them contain, in addition to the music notes, a considerable amount of text, the latter printed exclusively in the Italian language. Moreover, we are of opinion that this printed text constitutes a very important and significant feature of the work and that the printed music is secondary and incidental thereto.

The printed matter contained in these books is in the form of instructions in the popular method for learning to play on the piano, cornet, clarinet, and flute, respectively. It may well be, and an examination of the books actually discloses it to be the fact, that in so far as the printing is concerned the music notes greatly predominate over the printed words of instruction. But inasmuch as it is also perfectly evident that the books are designed solely and primarily as books of instruction in the use of the instruments named, we are satisfied that such instructions are of the utmost importance to the students for whom the books are intended. Clearly the books are intended for beginners on said instruments, and without the words of instruction the books would be utterly useless for the purpose for which they were printed. It is, therefore, plainly obvious that in these books at least the printed words constitute a very significant and important feature of the work. The music is arranged in the form of exercises for practice, scales, and the like, and is merely illustrative of the method and rule outlined in the printed instructions.

We think it is fair to assume that books of this character possess a distinctive value primarily as books of instruction in the manipulation and mastery of some instrument, and that the printed music therein, being in the form of scales, exercises, etc., is an insignificant feature compared with the printed words of instruction. The books would be of little or no use to a professional cornetist, clarinetist, or flutist; they are clearly intended for beginners, and can possibly have no value without the printed instructions.

In the matter of protests 45364b, etc., of Lyon & Healy, a precisely similar question to that here involved was presented, except that it arose under the act of 1897. In that case the board, in G. A. 5256 (T. D. 24154), said:

The question as to what books come within the provisions of paragraph 502 of the act of 1897 was discussed in G. A. 4970 (T. D. 23194), and a digest of the cases bearing

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on that question was appended to the decision. From these cases it would seem that the test as to music books with foreign words is, as stated in G. A. 1703 (T. D. 13323), whether or not the text is a minor or incidental feature of the work.

In the case last above referred to—G. A. 1703 (T. D. 13323)—certain books of music containing a song arranged in quartet parts, with chorus and orchestral accompaniment, and in which the printed music predominated over the words, were held to be properly classifiable as "books and pamphlets printed exclusively in languages other than English," for the reason that the printed words constituted a very significant feature of the work.

In harmony, therefore, with the prevailing decisions governing the question at issue, we sustain the claim alleged in the protest, by virtue of the said provision in paragraph 426, in so far as it purports to cover the books represented by the following descriptions, and the respective values thereof as here given will accordingly be excluded on reliquidation:

	Lire.
No. 45780, 5 copies, at 2.50 lire	12.50
No. 96546, 25 copies, at 2.50 lire	62.50
No. 96548, 15 copies, at 4 lire	60.00
No. 96537, 15 copies, at 2 lire	30.00

All subject to a discount of 50 per cent.

As to all other items and in all other respects the protest is overruled.

(T. D. 36540—G. A. 7930.)

Amendment of entry.

Paragraph I of section 3, tariff act of 1913, provides "that the owner, consignee, or agent of any imported merchandise may, at the time when he shall make entry of such merchandise, but not after either the invoice or the merchandise has come under the observation of the appraiser, make such addition in the entry to or such deduction from the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States * * *." *Held*, that this provision is intended to give permission to add or deduct on entry only in those cases where, at the time of entry, the invoice or merchandise has not come under the observation of the appraiser.

United States General Appraisers, New York, June 26, 1916.

In the matter of protest 795791 of Al. G. Pritchard & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Importers not represented by counsel.

Bert Hanson, Assistant Attorney General, for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* This entry relates to wrapping paper. It appears that at the time the entry was made the consular invoice

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was not at hand and entry was made on a pro forma invoice, bond being given to produce a consulated invoice. Immediately thereafter, about the time the goods were being appraised and the invoice sent to the appraiser, the consular invoice arrived. The appraisal, however, appears to have been made on the pro forma invoice and the value raised by an addition of £18 17s. 1d. Duty was assessed upon the appraised value, and an additional duty levied because of the appraiser's advance, as required by paragraph I of section 3, tariff act of 1913. The importers protest against the payment of the additional duty, and claim that, on their application to the collector, they should have been allowed to reform or amend their entry to conform to the value mentioned in the consular invoice, which practically corresponds to the appraisal made by the appraiser. Their claim is made on the ground that the invoice and goods had not come under the observation of the appraiser at the time they made the application to withdraw their entry and make a new entry. We find nothing in the law, however, that permits the importers to make a separate entry under the circumstances which they claim. The statute provides (paragraph I of section 3, tariff act of 1913)—

> That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make entry of such merchandise, but not after either the invoice or the merchandise has come under the observation of the appraiser, make such addition in the entry to or such deduction from the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States * * *.

We do not understand that this gives the importers the right to withdraw the entry or make a new entry. They are bound, in other words, according to the statute, by the entry they have made, whether it be on a pro forma invoice, or statement in the form of an invoice, or whatever document was used as an invoice or statement of the goods upon the entry thereof.

Under the customs administrative act of 1890 (sec. 7) it was provided—

> That the owner, consignee, or agent of any imported merchandise which has been actually purchased, may at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States * * *.

This provision continued in force up to the law of 1909, at which time a change was made in that the right was given to deduct from, as well as to add to, the cost or value given in the invoice, etc., the language pertinent to this discussion being found in the first part of subsection 7 of section 28 of the tariff act of 1909.

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This was followed by paragraph I of section 3 of the law of 1913, which is quoted above.

Under the law of 1890 the Secretary of the Treasury promulgated a regulation, known as article 1449 of the Customs Regulations of 1899, which is as follows:

1449. In view of the oath prescribed by law to be taken on entry, making it the duty of the importer, in case he discover, at any time after entry, any error in the invoice or account produced, or receive any other invoice, to make the same known immediately to the collector of the district with whom entry may have been made, it is directed that, whenever such error is brought to the notice of the collector, before the invoice or account has come under the observation of the appraisers, or any examination has been made of the goods, and application under oath is made to amend the entry by the importer, such application shall be transmitted to the Secretary of the Treasury for such action as may be deemed proper.

The above was repeated as article 208 of the Customs Regulations of 1908, the regulations, if any, which were in force and controlling at the time of the entry of these goods.

Similar language has been inserted in the law of 1913, where it is provided that, under certain conditions, the importer may make such additions to, or such deductions from, the cost or value given in the invoice as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise in case the invoice or the merchandise has not come under the observation of the appraiser. (See paragraph I of section 3, act of 1913, quoted *supra*.)

It would appear that the regulation has been so construed as to allow a change of the entry after it had been formally made. There is nothing, however, in the law which we think may be construed into permission to change an entry. There is, however, in the statute that which permits addition to or deduction from the invoice values or prices at the time of entry. In view of this language being set forth in the act itself, we think there can be but one conclusion, that is, that Congress, having in mind the construction given to the regulations, desired and intended to prohibit any change in the entry after it had been formally made. It is granted in the statute, however, that the additions or deductions may be made at the time of entry. This permission, however, is not given in case the invoice or merchandise has come under the observation of the appraiser.

In the case now before us the facts seem clear that the entry and appraisal had been made before an application was made to change the entry. We find nothing in the law, as stated above, which permits a change in the entry, and conclude from reading the statute that the right to add or deduct at the time of entry is limited by the terms of the statute to cases where the invoice or merchandise has not come under the observation of the appraiser. This entry having been made, therefore, the question in this case as to whether it had

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or had not come under the observation of the appraiser is immaterial. Had it been a case where the importer was claiming the right to add or deduct at the time the entry was made, it might be of moment, but it is not here. Duty, apparently, was assessed upon the value given in the consular invoice, which corresponds, as we understand it, with the appraised value of the goods.

The protest is overruled.

(T. D. 36541—G. A. 7931.)

Cork insulation.

Cork boards or slabs, shown to have been manufactured from granulated cork, placed in steel forms, moistened and pressed, and then cut into the forms in which they are imported, *held* to be cork insulation in slabs or boards and subject to duty at one-fourth of 1 cent per pound under the provisions of paragraph 340, tariff act of 1913.

United States General Appraisers, New York, June 30, 1916.

In the matter of protest 757287 of C. H. Weber against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Thad. S. Sharretts for the importer.

Bert Hanson, Assistant Attorney General (*Chas. D. Lawrence* and *Frank P. Wilson*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

McClelland, *General Appraiser:* The appraiser returned the merchandise which is involved in this protest as manufactures of cork, and the collector assessed it with duty at the rate of 30 per cent ad valorem under the last provision in paragraph 340 of the tariff act of 1913. Protestant claims that duty should have been assessed at one-fourth of 1 cent per pound, or in the alternative, at 3 cents per pound under other provisions of the same paragraph, or at 10 per cent ad valorem under paragraph 384, or free of duty under paragraph 464 of said act.

At the trial of the issue, however, counsel waived all claims in the protest except that for duty at one-fourth of 1 cent per pound. The provisions applicable are as follows:

Manufactures wholly or in chief value of cork or of cork bark, or of artificial cork or bark substitutes, granulated or ground cork, not specially provided for in this section, 30 per centum ad valorem.

Cork insulation, wholly or in chief value of granulated cork, in slabs, boards, planks, or molded forms, one-fourth of 1 cent per pound.

The issue seems to have been tried on the part of the importer with the single purpose of showing that this article was not cork carpet,

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and on the part of the Government that it was. In the course of the trial counsel for protestant stated for the record, "I am willing to concede that the appraiser's report is correct; that it is granulated cork used on floors," and this statement is in harmony with the proof in the case, for it is shown that similar cork boards were used on the floors of the reading room of a public library at Charlestown, Mass., and on the floor of a grillroom in a hotel in Portland, Oreg.

Two witnesses on behalf of protestant testified generally as to other uses, such as insulating against heat, cold, noise, and moisture, but no particular instances of such uses were given. We do not think that mere proof of the use of similar cork boards on floors is sufficient in itself to warrant the conclusion that the merchandise is cork carpet and not the cork insulation contemplated by the provision in paragraph 340, *supra*. The witness Weber, who seems to have been thoroughly familiar with the manufacture of cork insulation in slabs and boards, and also the manufacture of cork carpet, points out very clearly the differences in the processes of manufacture of the two articles. He states that insulated cork boards, as represented by Exhibits 1 and 2, are made from waste cork which is granulated and then placed in large steel forms, where it is moistened, subjected to hydraulic pressure, and then placed in drying ovens, from which it comes in large blocks, and is then cut into boards similar to those subject of protest. Cork carpet is made in part of granulated cork, cork meal, wood pulp, and oxidized linseed oil, and that altogether 22 distinct processes are required in its manufacture. These statements of processes of manufacture are not controverted and we are therefore warranted in accepting them as being true. There would not seem to be any inconsistency between the uses of insulated cork board as detailed by the witness and its use on the floor of a reading room of a library, for if there is one place more than another where every precaution is taken to guard against unnecessary noise it is in such a room; neither do we think there is anything inconsistent in its use on the floor of a grillroom of a hotel, inasmuch as the manager of the hotel where it was used testified that among other reasons for its use there is "its resiliency and being quiet and being soft."

On the record as it comes to us protestant seems to have proved his claim for duty at the rate of one-fourth of 1 cent per pound, and to that extent the protest is sustained.

The decision of the collector is reversed.

No evidence having been offered in support of the issue involving the 5 per cent discount of duties under subsection 7 of paragraph J of section 4 of said tariff act, the claim in respect thereof is hereby overruled.

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(T. D. 36542—G. A. 7932.)

Musical instrument—Scientific apparatus.

An instrument in the nature of an organ or piano, imported by a society incorporated "to maintain and perfect an orchestra; to give concerts for the purpose of cultivating a progressive musical interest in the citizens of St. Louis; to educate the members of the orchestra in correct musical principles, and to furnish to the people of St. Louis, at the lowest possible cost, musical entertainments of the highest order," for the use of such society, and not for sale, is dutiable as a musical instrument under paragraph 467 of the act of 1909, and is not free under paragraph 650 of that act, it not being, as required by the terms of this statute, a "philosophical and scientific apparatus," etc., and not imported by a society incorporated *solely* for the purposes mentioned in the paragraph.

McCLELLAND, *General Appraiser*, concurring, holds: A musical instrument imported for the use of an organization the constitution and purposes of which do not entitle it to the benefits of paragraph 650 of the tariff act of 1909 is not entitled to free entry under that paragraph. Reasoning of General Appraiser Sullivan dissented from in so far as it expresses a different view, or may be in conflict with Sargent's case, G. A. 5532 (T. D. 24902) and United States *v.* Kastor (6 Ct. Cust. Appls., 52; T. D. 35323).

United States General Appraisers, New York, June 30, 1916.

In the matter of protest 735616 of the St. Louis Symphony Society against the assessment of duty by the collector of customs at the port of St. Louis.

[Affirmed.]

Comstock & Washburn (*J. Stuart Tompkins*) for the importers.

Bert Hanson, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers; McCLELLAND, G. A., and BROWN, G. A., concurring).

SULLIVAN, *General Appraiser:* The merchandise in question is described by one of the witnesses testifying on behalf of the protestant as follows:

The instrument is something in the nature of an organ, really consisting of bells which are played by keys. A hammer works the same as a piano is played. Represents a full scale of several octaves on the scale. A hammer operated by keys strikes the bells.

It is admitted to be a musical instrument, and was assessed for duty as such at 45 per cent ad valorem under paragraph 467 of the tariff act of 1909.

The protestant claims it free of duty under paragraph 650 of the same act, which provides:

650. Philosophical and scientific apparatus, utensils, instruments, and preparations, including bottles and boxes containing the same, specially imported in good faith for the use and by order of any society or institution incorporated or established *solely* for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy,

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school, or seminary of learning in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe. [Italics ours.]

The organ was imported by the St. Louis Symphony Society solely for the use of that organization, and not for sale, being ordered by the conductor of its orchestra pursuant to instructions from the society.

As shown by the articles of association and by-laws of the St. Louis Symphony Society (Exhibit A), its object is stated as—

Object.—The object of this society shall be to maintain and perfect an orchestra; to give concerts for the purpose of cultivating a progressive musical interest in the citizens of St. Louis; to educate the members of the orchestra in correct musical principles; and to furnish to the people of St. Louis, at the lowest possible cost, musical entertainments of the highest order.

The proof establishing beyond doubt that the merchandise is a musical instrument, is it not dutiable under paragraph 467, being specifically provided for therein, rather than free under the paragraph claimed?

Paragraph 650 lays down as the first requisite entitling an article to free entry that it must be "philosophical and scientific apparatus, utensils, instruments, and preparations." Common observation leads us to say that an instrument in the nature of an organ or piano is not a philosophical and scientific apparatus, utensil, instrument, or preparation. Neither philosophy nor science has ever recognized or claimed that an organ was a philosophical or scientific apparatus. The art of music may be a science and its cultivation deeply gratifying and to be encouraged, but the instrument upon which this art is displayed would not be called philosophical or scientific. It might as well be declared that the human voice, used to display the art of singing or speaking, is a philosophical or scientific instrument. Music is an art, but the instrument by which it is conveyed to the public is not a scientific apparatus. A reading of the paragraph indicates clearly to our minds that the philosophical and scientific apparatus, utensils, instruments, and preparations referred to are not of the character or class of merchandise in dispute.

In addition, the society in question is not incorporated "*solely* for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts," nor is it a "college, academy, school, or seminary of learning," nor a "State or public library," necessary requisites for free entry under paragraph 650. It may educate the members of its orchestra in correct musical principles and encourage the fine art of music, but it is not incorporated solely for such purpose, as is shown by the quotation from its articles of association and by-laws, *supra*. It is also incorporated to maintain and perfect an orchestra, and to give concerts and musical

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entertainments for pay. These objects are outside of those provided for by the paragraph, and the educational object is merely incidental.

In Massachusetts General Hospital *v.* United States (112 Fed., 670), it was held that—

> A hospital with *incidental* educational features, * * * is not an institution incorporated or established *solely* for * * * educational purposes, nor a "college, academy, school, or seminary of learning" within the meaning of paragraph 638 of the tariff act of 1897; and surgical instruments or appliances imported by such a hospital for its use *are not* entitled to admission free of duty under said paragraph. (Italics ours.)

The wording of paragraph 638 of the tariff act of 1897 is identical with that of paragraph 650 of 1909.

General Appraiser Hay said, in speaking for the board in Sargent's case, G. A. 5532 (T. D. 24902):

> We can not doubt, therefore, that it was the intention of Congress to embrace within this provision every article imported in good faith for the use and by the order of any college, academy, school, or seminary of learning in the United States, and not intended for sale, that serves a useful purpose and is required by such institution in philosophical or scientific investigation, research, demonstration, or instruction. It is not intended that this should comprehend those articles of ordinary furniture and equipment which are used not only in schools and colleges but in offices and business houses as well, but only such as are especially appropriate in philosophical or scientific investigation, research, demonstration, or instruction.

See also Abstract 36478 (T. D. 34763); Abstract 37975; Abstract 38687; Abstract 38843; United States *v.* Kastor (6 Ct. Cust Appls., 52; T. D. 35323); United States *v.* Durbrow (6 *Id.*, 65; T. D. 35324), United States *v.* Rheinboldt (6 *Id.*, 66; T. D. 35325).

For the reasons stated the protest is overruled and the collector's decision affirmed.

BROWN, *General Appraiser:* I concur in the conclusion reached by Judge Sullivan.

CONCURRING OPINION.

MCCLELLAND, *General Appraiser:* I concur in the conclusion reached by Judge Sullivan, not because I believe that an organ or other musical instrument may not under certain conditions be admitted free of duty under paragraph 650, but for the reason that the musical instrument involved was imported for the use of an organization the constitution and purposes of which do not entitle it to the benefits of the provisions of that paragraph; and in so far as the reasoning of Judge Sullivan may be construed as expressing a different view, or in so far as it may be in conflict with Sargent's case, G. A. 5532 (T. D. 24902), and United States *v.* Kastor (6 Ct. Cust. Appls., 52; T. D. 35323), I dissent therefrom.

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(T. D. 36543—G. A. 7933.)

Newspapers bound into books.

A number of copies of the London Times, which have been bound into books, are properly dutiable under the provision in paragraph 329, act of 1913, for "books of all kinds," as classified by the collector, rather than entitled to free entry under the provision in paragraph 556 of said act for "newspapers," as claimed by the importer.

United States General Appraisers, New York, June 30, 1916.

In the matter of protest 744805-49837 of J. Keeley against the assessment of duty by the collector of customs at the port of Chicago.

[Affirmed.]

H. W. Ackhoff for the importer.

Bert Hanson, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise covered by this protest consists of a number of copies of the London Times bound into book form. The present importation contains 32 volumes. Duty was levied thereon under the following provision in paragraph 329 of the act of 1913:

Books of all kinds, bound or unbound, including blank books, slate books, and pamphlets, * * *, all the foregoing, and not specially provided for in this section, 15 per centum ad valorem.

It is claimed that said articles are properly entitled to free entry under the following provision in paragraph 556 of said act:

Newspapers and periodicals; but the term "periodicals" as herein used shall be understood to embrace only unbound or paper-covered publications issued within six months of the time of entry, devoted to current literature of the day, or containing current literature as a predominant feature, and issued regularly at stated periods, as weekly, monthly, or quarterly, and bearing the date of issue.

The question is, What is the tariff status of these articles; are they books or are they newspapers? If the binding of newspapers into volumes, with a title page to each volume, does not operate to change the tariff status of the articles from that of newspapers into books, then the contention of the importers that the provisions of paragraph 556 apply and that the articles are entitled to free entry thereunder as newspapers must be sustained. If, on the other hand, it is found that the binding of such newspapers into a volume with a title page has, in effect and in substance, resulted in the creation of a new article, to wit, a book, and that by reason of the additional processes of manufacture the newspapers must be deemed to have lost their identity as such and to have become merely material employed in the making up of books, then, of course, the protest must be overruled.

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A "book" is defined by the Standard Dictionary as—

A number of sheets of paper bound or stitched together, whether blank, written, or printed, used for any purpose. Specifically: (1) A printed and bound volume of some bulk, as distinguished from a pamphlet.

The same term is defined by Webster as—

A collection of tablets of wood or ivory, of sheets of paper, parchment, or similar material, blank, written, or printed, strung or bound together; commonly many folded and bound sheets containing continuous printing or writing.

True, the sheets in the books in question happen to be newspaper pages. But a book, as above defined, may consist of sheets of paper bound or stitched together, whether blank, written, or printed. At best, a newspaper is a number of printed sheets. Bound into books they become books of newspapers, just as sheets of music bound together become books of music. It becomes a book by reason of the manufacturing processes of stitching, binding, and permanently placing within covers, and not by virtue of the character or nature of the contents. To hold otherwise would require that blank sheets of paper which have been bound into a book should, nevertheless, be treated not as a book but merely as blank sheets of paper. And this ridiculous theory would apply to material of various kinds which may be bound into books.

In G. A. 5308 (T. D. 24321) this board held that bibulous paper bound into book form was no longer dutiable as bibulous paper but as books.

In G. A. 376 (T. D. 10881) the question arose under the tariff act of 1883 concerning the proper classification of bound volumes of periodicals. That act, however, did not provide, as does the present tariff act, that bound periodicals should be excluded from the provision according free entry to periodicals. Judge Somerville, writing the opinion of the board in that case, said:

The uniform ruling of the Treasury Department for years past, based on the opinion of the United States Attorney General, has been to hold publications of this kind, bound in stiff covers in book form, to be dutiable as "books," on the ground that they have lost their character as periodicals and become books within the meaning of that word in the tariff law.

That ruling is fully applicable to the question presented in the case at bar. Newspaper sheets having been bound into books are certainly no longer newspapers. They are more; they are books of newspapers; they have lost their original identity as newspapers and have become for all purposes books.

Counsel for the importers argues that a reading of paragraph 556 will plainly show that Congress expressly refrained from limiting the scope of the provision for newspapers, and that any qualifying language contained in said paragraph was intended to be confined solely

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to periodicals. He therefore contends that it was the congressional purpose to admit free of duty newspapers bound into books.

Of course, we can not agree with any such construction of the paragraph. The qualifying language used by Congress in connection with the term "periodicals" is indicative of the fact that it was the legislative purpose to adopt the judicial interpretation of the word "book" as enunciated in the board's ruling in G. A. 376, *supra*. This it virtually did in limiting the term "periodicals" to publications of the unbound or paper-covered class. It is a well-recognized fact that periodicals are invariably stitched together with thread or with wire, and that they are therefore in a sense a species of book. Congress, however, evidently intended to remove all possible question and hence restricted the term periodicals to include only such as have not been bound into book form. Concerning the term "newspapers," any such restriction or limitation was deemed wholly unnecessary, inasmuch as newspaper sheets are always loose and a congressional definition thereof would consequently be entirely superfluous.

The protest is therefore overruled and the decision of the collector affirmed.

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, JUNE 26, 1916.

No. 39932.—Protests 802610, etc., of Morimura Bros. (New York), and protest 798501 of John Wanamaker (Philadelphia).

BAMBOO LAMP SHADES—CANDLE SHADES.—Bamboo lamp shades and candle shades classified at 25 per cent ad valorem under paragraph 175, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinions by MCCLELLAND, G. A. On the authority of G. A. 7804 (T. D. 35848) the lamp shades and candle shades in question were held dutiable under paragraph 176.

No. 39933.—Protest 797853 of A. Klipstein & Co. (New York).

ORCHIL.—Merchandise classified as an extract of vegetable origin used for dyeing at three-eighths of 1 cent per pound under paragraph 30, tariff act of 1913, is claimed free of duty as orchil or orchil liquid under paragraph 564.

Opinion by MCCLELLAND, G. A. It was found that the merchandise consists of orchil or orchil extract or archil, used by carpet manufacturers for dyeing wool a red shade. It was held free of duty under paragraph 564. G. A. 7607 (T. D. 34817) and Abstract 37554 followed.

No. 39934.—Protest 711372 of A. C. Horn & Co. (New York).

STONIFLEX PAINT—COAL-TAR PREPARATION.—Merchandise invoiced as "Stoniflex paint," classified as paint at 30 per cent ad valorem under paragraph 56, tariff act of 1909, is claimed dutiable as a coal-tar preparation at 20 per cent under paragraph 15.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 38954 the commodity in question was held dutiable as a coal-tar preparation under paragraph 15.

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No. 39935.—Protest 776660 of Maltus & Ware (New York).

IMMORTELLES, COLORED.—Colored immortelles classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable by similitude as preserved cut flowers at 25 per cent under paragraph 210.

Opinion by MCCLELLAND, G. A. In harmony with Bayersdorfer *v.* United States (7 Ct. Cust. Appls., —; T. D. 36390) the immortelles in question were held dutiable under paragraph 210.

No. 39936.—Protests 785025, etc., of Sussfeld, Lorsch & Co. (New York).

MAGNIFYING GLASSES—MICROSCOPES.—So-called pocket microscopes, loupes, pocket magnifiers, linen provers, comptefils, Coddington magnifiers, floroscopes, combination microscopes, tripod microscopes, hand magnifiers, and reading glasses, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. It was found that the articles in question are used to magnify articles that are not discernible by the naked eye. They were held dutiable as microscopes under paragraph 94. G. A. 7859 (T. D. 36174) and Abstracts 38900 and 39249 followed.

No. 39937.—Protests 761508, etc., of Taylor, Hobson Co. (New York).

COOKE'S PRISMS.—Merchandise invoiced as square face prisms, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 380.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39352 the prisms in question were held dutiable under paragraph 380.

No. 39938.—Protests 764012, etc., of H. V. Allien & Co. et al. (New York).

POLICE WHISTLES.—Policemen's whistles composed of metal, nickel-plated, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The whistles in question were held dutiable under paragraph 167. Schoverling *v.* United States (7 Ct. Cust. Appls., —; T. D. 36491) followed.

No. 39939.—Protest 794828 of Geo. Borgfeldt & Co. (New York).

BRASS PENCIL SHARPENERS.—Brass and steel pencil sharpeners classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Pencil sharpeners were found not designed to be carried on or about or attached to the person, which is an essential to classification under the third clause of paragraph 356. They were held dutiable under paragraph 167. Gallagher *v.* United States (6 Ct. Cust. Appls., 105; T. D. 35343) and United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456) cited.

No. 39940.—Protests 436739, etc., of Endemann & Churchill et al., protests 406497, etc., of Fensterer & Ruhe, protests 279144, etc., of Fondeville & Von Iderstine, and protests 448330, etc., and 718446, etc., of B. Gunthel et al. (New York).

STEM WARE.—Stem ware classified as composed wholly or in chief value of blown glass is claimed dutiable as manufactures of glass. Glass door knobs, towel bars, dishes in three pieces, and rosettes and stars, classified at 60 per cent ad valorem under paragraph 98, tariff act of 1909, are claimed dutiable at 45 per cent under paragraph 109.

Opinions by SULLIVAN, G. A. Upon stipulation of counsel United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457) followed as to stem ware. The door knobs, towel bars, and glass dishes were found to be pressed glass and held dutiable at 45 per cent under paragraph 109. G. A. 7076 (T. D. 30824) cited. Protests sustained in part.

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BEFORE BOARD 2, JUNE 26, 1916.

No. 39941.—Protests 749498, etc., of Spielmann & Co. et al. (New York).

SILK MOURNING CRAPES.—Silk mourning crapes classified as silk veilings or trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as woven silk fabrics in the piece at 45 per cent under paragraph 318.

Opinion by HOWELL, G. A. G. A. 7641 (T. D. 34927) followed as to protest fee. Upon stipulation of counsel goods invoiced as "piece dyed silk crape," "piece dyed silk crêpe ninon," "silk crape," "crape," and "crape mat," found to consist of silk mourning crapes of the same dutiable character as those passed upon in Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320), were held dutiable as woven silk fabrics under paragraph 318.

BEFORE BOARD 1, JUNE 28, 1916.

No. 39942.—Protests 788340-57706, etc., of Barnard, Judae & Co. (Chicago).

TILE PANELS.—Tiles designed to form a completed panel or picture representing a dairy farm, to be used as a wainscoting in restaurants, classified as articles composed of earthenware tiles at 30 per cent ad valorem under paragraph 72, tariff act of 1913, are claimed dutiable at 5 cents per square foot under another provision of the same paragraph.

Opinion by MCCLELLAND, G. A. The tiles in question were held properly classified at 30 per cent under paragraph 72. Abstracts 36908 and 36925 followed.

No. 39943.—Protests 801465-58886, etc., of International Forwarding Co. (Chicago).

CHIP ROPINGS.—Merchandise reported by the appraiser to consist of chip ropings made of wood shavings attached to cotton cords, classified as manufactures of chip at 20 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable at various lower rates.

Opinion by MCCLELLAND, G. A. The assessment of chip ropings under paragraph 368 was found in harmony with United States *v.* Kronfeld (7 Ct. Cust. Appls., —; T. D. 36425). Protests overruled.

No. 39944.—Protest 799999-59031 of John O. Notari & Co. (Chicago).

RUSCUS LEAVES.—Merchandise invoiced as dried leaves (ruscus), classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385.

Opinion by MCCLELLAND, G. A. The ruscus leaves in question were held dutiable under paragraph 385. Abstract 39274 followed.

No. 39945.—Protests 784104-57016, etc., of Marshall Field & Co. (Chicago).

FURNITURE OF WOOD.—Furniture classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable in chief value of wood at 15 per cent under paragraph 176.

Opinion by MCCLELLAND, G. A. The furniture in question was held dutiable as in chief value of wood under paragraph 176, as claimed.

No. 39946.—Protests 780334, etc., of Brunswick-Balke-Collender Co. et al. (New York).

LEATHER CUE TIPS.—Leather cue tips classified at 30 per cent ad valorem under paragraph 360, tariff act of 1913, are claimed free of duty, or dutiable at various lower rates.

Opinion by MCCLELLAND, G. A. On the authority of Brunswick-Balke-Collender Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36253), affirming Abstracts 38595. and 38865, the leather cue tips were held properly classified under paragraph 360.

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No. 39947.—Protests 731468, etc., of Louis Stern & Co. (Providence).

MESH—PARTS OF MESH BAGS.—A baglike form of metal mesh classified as parts of mesh bags at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed dutiable as mesh suitable for use in the manufacture of mesh bags at 50 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39768 the merchandise in question was held properly classified as parts of mesh bags under paragraph 356.

No. 39948.—Protest 732921 of American Express Co. (New York.)

STEEL SHOE BUCKLES OR SLIDES.—Steel shoe buckles or slides classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal not specially provided for at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The shoe buckles or slides in question were held properly classified under paragraph 356. Abstract 36878 (T. D. 34920) followed.

No. 39949.—Protest 769516 of Knauth, Nachod & Kuhne (New York).

COLLAPSIBLE METAL DRINKING CUPS.—Collapsible metal drinking cups in leather cases, the inside of the cups plated with gold, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The cups in question were held dutiable as articles plated with gold under paragraph 167. Abstract 38700 followed.

No. 39950.—Protest 772098-55736 of Marshall Field & Co. (Chicago).

TAPE MEASURES.—Tape measures about 1 meter long, inclosed in a round nickel plated case about 1½ inches in diameter by one-half inch thick, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7824 (T. D. 35949) and Abstract 39074 the tape measures in question were held dutiable under paragraph 167.

No. 39951.—Protest 786447 of American Bead Co. (New York).

BEADS OR SPANGLES—IMITATION PRECIOUS STONES.—Merchandise invoiced as "Roses montees extra," consisting of small faceted pieces of glass resembling rhinestones set into base-metal settings, between each stone and the setting being a space by which the article can be sewn on to cloth, classified as glass and metal spangles at 35 per cent ad valorem under paragraph 333, tariff act of 1913, is claimed dutiable as imitation precious stones at 20 per cent under paragraph 357, as manufactures of glass or paste at 30 per cent under paragraph 95, or as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. It was found that these articles are used for trimming garments and theatrical goods and for the same purpose as spangles. They were held properly classified under paragraph 333.

No. 39952.—Protests 758931, etc., of Farbwerke-Hoechst Co. et al. (New York).

COAL-TAR COLORS—LAKES.—Merchandise classified as coal-tar colors at 30 per cent ad valorem under paragraph 20, tariff act of 1913, is claimed dutiable at 10 per cent under paragraph 23, at 15 per cent under paragraph 21, or under paragraph 63.

Opinion by BROWN, G. A. On the authority of G. A. 7668 (T. D. 34609), affirmed in Farbwerke-Hoechst Co. *v.* United States (6 Ct. Cust. Appls., 483; T. D. 36121), the merchandise in question was held properly classified under paragraph 20.

No. 39953.—Protest 684349 of Wm. A. Brown & Co. (New York).

FISH IN TINS.—Anchovies classified as fish in tins at 30 per cent ad valorem under paragraph 270, tariff act of 1909, are claimed dutiable as salt herrings at one-half of 1 cent per pound under paragraph 272.

Opinion by BROWN, G. A. On the authority of United States *v.* Miller (5 Ct. Cust. Appls., 256; T. D. 34443) the anchovies in question were held dutiable under paragraph 272.

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BEFORE BOARD 3, JUNE 28, 1916.

No. 39954.—Protest 782581 of Colin D. Mawer Co. (New York).

STUFFED OLIVES.—Olives stuffed with sweet red peppers, classified as olives under paragraph 218, tariff act of 1913, are claimed dutiable under various paragraphs.

Opinion by WAITE, G. A. The stuffed olives in question were held properly classified under paragraph 218. G. A. 7905 (T. D. 36387) followed.

No. 39955.—Protests 789241, etc., of Yglesias Lobo & Co. (New York).

SCRAP ZINC—CUBAN TREATY.—Merchandise invoiced as old scrap zinc, classified under paragraph 163, tariff act of 1913, is claimed entitled to a discount of 20 per cent from the regular duty by virtue of the Cuban reciprocity treaty.

Opinion by HAY, G. A. On the authority of Abstract 38890 and G. A. 7419 (T. D. 33116) the old scrap zinc in question was held subject to the reduction of duty by virtue of Article II of the Cuban reciprocity treaty.

BEFORE BOARD 1, JUNE 30, 1916.

No. 39956.—Protests 722706, etc., of Koscherak Bros. et al. (New York and Boston).

STEM WARE.—Stem ware classified as composed wholly or in chief value of blown glass is claimed dutiable as manufactures of glass.

Opinion by SULLIVAN, G. A. United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457) followed as to stem ware. Protests sustained in part.

No. 39957.—Protest 786092 of P. J. Kenedy & Sons (New York).

ROSARIES—CRUCIFIXES.—Rosaries and crucifixes classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456), affirming Abstract 38766, the rosaries and crucifixes were held dutiable according to the component of chief value under paragraph 167.

No. 39958.—Protest 785552 of Joseph Jacobs (New York), and protest 780485 of B. Muller-Thyme & Co. (St. Louis).

ROSARIES—MEDALS.—Medals, crosses, rosaries, and other religious emblems classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable under paragraph 167.

Opinions by SULLIVAN, G. A. The articles in question were held dutiable according to the component material of chief value. United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456) followed. Unfinished rosaries of Job's tears berries and metal were held dutiable as nonenumerated manufactured articles under paragraph 385. Protests overruled as to these, the correct claim not having been made.

BEFORE BOARD 2, JUNE 30, 1916.

No. 39959.—Protests 800781, etc., of B. L. Strasburger & Co. et al. (New York).

TIMERS—SUFFICIENCY OF PROTEST.

FISCHER, *General Appraiser:* The articles in question consist of so-called "timers" and are precisely similar in character to those heretofore passed upon by this board in G. A. 7827 (T. D. 35971) in the matter of protest 782729 of Byron L. Strasburger & Co. Duty was levied thereon at the rate of 30 per cent ad valorem under the provision in paragraph 161 of the act of 1913 for "watch movements, whether imported in cases or not." The importers contend that said articles are properly dutiable at but 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal.

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The appraiser's reports have been offered in evidence and state that "the merchandise marked 'A' consists of what is known as stop watches * * *. It would now be returned for duty as a manufacture of metal at 20 per cent ad valorem under paragraph 167 as amended."

Counsel for the Government at the hearing and in his brief filed with the papers in the case raises an objection to the consideration of the protests on the ground that they refer to the articles intended to be covered thereby as "time detectors, timers," whereas the invoices contain no such designated merchandise; and that consequently any contention for a lower rate of duty alleged in said protests to be properly chargeable against merchandise so designated on the invoice must necessarily be held to be too vague and indefinite.

An examination of the invoices discloses the fact that certain items are described thereon as "compteur," which is the French term for "timers," or by an abbreviation of that term. Furthermore, it is clearly apparent that the appraiser fully understood that a compteur signifies a timer, since his reports admit that such articles consist of time detectors or timers, and he has specifically distinguished them on the invoices by marking opposite them the letter "A." What is more, he wrote opposite such items to the left in red ink, the words "timers only," and to the right thereof in similar manner we find his notation "Mfrs. metal 20 per cent p. 167, see report protest 363, J. E. T.," the latter initials being those of Examiner Treadwell. We are therefore satisfied that the contention of the Government that the protests are vague and indefinite in that they fail to properly identify the merchandise intended to be covered thereby is not well founded.

Accordingly, we follow our previous rulings and hold the timers in question to be properly dutiable at the rate of 20 per cent ad valorem under paragraph 167. That claim in each of said protests is therefore sustained; in all other respects, however, the protests are overruled.

No. 39960.—Protest 793921 of J. D. Randall Co. (Cleveland).

SEWING MACHINE NEEDLES.—Randall needles classified as needles for sewing machines at 20 per cent ad valorem under paragraph 135, tariff act of 1913, are claimed entitled to free entry as needles for shoe machines under paragraph 555.

Opinion by FISCHER, G. A. Protest unsupported; overruled.

No. 39961.—Protest 784767 of C. V. W. Cortelyou (New York).

BRONZE POWDER.—Merchandise classified as bronze powder at 25 per cent ad valorem under paragraph 146, tariff act of 1913, is claimed dutiable as a manufacture of metal at 20 per cent under paragraph 167, as a metallic mineral substance in a crude state at 10 per cent under paragraph 154, or as a nonenumerated manufactured article at 15 per cent under paragraph 385.

FISCHER, *General Appraiser:* * * * The importation consists of finely powdered copper which has not been subjected to any further manufacturing process than that of powdering. The importer contends that, as known to the trade, "bronze powder" signifies a metallic powder which has been polished subsequent to having been powdered, and that in this polishing process stearine is employed. However the preponderance of the evidence in the case amply satisfies us that commercially the term "bronze powder" is not so restricted, but that it likewise embraces metallic powders which have not been subjected to a polishing process, and that the particular merchandise here under consideration is very properly described as a bronze powder. The protest is therefore overruled and the decision of the collector is affirmed.

No. 39962.—Protest 786929 of G. W. Sheldon & Co. (New York).

SHOW CARDS.—Advertising show cards or signs composed of cardboard covered with surface-coated paper, the advertising matter being stamped out, not printed, classified as articles composed in chief value of surface-coated paper at 35 per cent ad valorem

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under paragraph 324, tariff act of 1913, are claimed dutiable as manufactures of paper at 25 per cent under paragraph 332.

Opinion by FISCHER, G. A. From the analysis it was found that some of the merchandise consists in chief value of surface-coated paper and some is composed chiefly of cardboard. The record, however, not showing just how many are in chief value of surface-coated paper and how many in chief value of cardboard, protest overruled.

No. 39963.—Protests 786317, etc., of Pfaltz & Bauer (New York).

SALTS OF ANTIMONY.—Merchandise invoiced as sulphide of antimony, classified at 25 per cent ad valorem under paragraph 144, tariff act of 1913, is claimed dutiable as a chemical salt not specially provided for at 15 per cent under paragraph 5.

Opinion by FISCHER, G. A. Upon stipulation of counsel the merchandise in question was held dutiable under paragraph 5. Abstract 38660, affirmed in United States *v.* Innis (7 Ct. Cust. Appls., —; T. D. 36254), followed.

No. 39964.—Protest 794832 of Geo. Borgfeldt & Co. (New York).

COTTON GLOVES.—Gloves classified as composed in chief value of silk at 50 per cent ad valorem under paragraph 317, tariff act of 1913, are claimed to be cotton chief value, dutiable under the provision for cotton gloves at 35 per cent in paragraph 260.

Opinion by HOWELL, G. A. It was found that the gloves are cotton chief value. They were held dutiable under paragraph 260.

No. 39965.—Protest 755095 of Hirshbach & Smith (New York).

CHILDREN'S APRONS—TUCKINGS—APPLIQUÉD WEARING APPAREL.—Children's aprons classified as wearing apparel, appliquéd, or in part of tuckings, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as cotton wearing apparel at 30 per cent under paragraph 256.

Opinion by HOWELL, G. A. On the authority of United States *v.* Hamburger (5 Ct. Cust. Appls., 217; T. D. 34382) and United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the aprons in question were held dutiable as cotton wearing apparel under paragraph 256.

REHEARING GRANTED.

No. 39966.—TRIMMINGS.—Protest 794907 of J. Friedenberg & Co. Decided May 17, 1916. Not published.

(T. D. 36544.)

Reliquidation—Fraud.

VITELLI & SON *v.* UNITED STATES (No. 1464) AND VITELLI & SON *v.* UNITED STATES (No. 1474).

1. SPECIAL DEPUTY COLLECTOR MAY LIQUIDATE AND RELIQUIDATE.

   The powers and duties of collectors of customs are equally vested in their special deputies; and the special deputies' right and power to liquidate and reliquidate are without question.

2. COLLECTOR'S POWER TO LIQUIDATE AND RELIQUIDATE.

   The power of a collector of customs to liquidate and reliquidate is vested in him by statute and unlimited except by affirmative law. This has been recognized by consistent, persistent, and continuous administrative practice, legislative enactment, and judicial decision since the institution of his office.

3. COLLECTOR'S POWER TO LIQUIDATE—TIME.

   There never has been, and is not now, a time limit within which the original liquidation must be made.

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4. COLLECTOR'S POWER TO RELIQUIDATE—LIMITATION.

The first limitation upon the collector's power to reliquidate was section 21 of the act of June 22, 1874 (18 Stat. L., 186).

5. COLLECTOR'S POWER TO RELIQUIDATE WHEN GOODS HAVE GONE BEYOND HIS CONTROL.

The power of the collector to reliquidate when the goods have gone beyond his possession or control has been administratively, legislatively, and judicially recognized from the earliest time.

6. COLLECTOR'S POWER TO RELIQUIDATE WITHIN YEAR FROM ENTRY.

The collector's power to reliquidate within a year after entry has received uniform administrative, legislative, and judicial recognition prior to, and since, the passage of the act of June 22, 1874 (18 Stat. L., 186).

7. COLLECTOR'S POWER TO RELIQUIDATE AFTER YEAR FROM ENTRY IN CASE OF PROTEST.

The collector's power to reliquidate after the expiration of a year from entry in case of protest has received uniform administrative, legislative and judicial recognition prior to, and since, the passage of the act of June 22, 1874 (18 Stat. L., 186).

8. COLLECTOR'S POWER TO RELIQUIDATE RECOGNIZED IN ACT OF MARCH 3, 1875 (18 STAT. L., 469).

The act of March 3, 1875 (18 Stat. L., 469) "restricting the refunding of customs duties," etc., implies that the collector has an inherent general power to reliquidate.

9. COLLECTOR'S POWER TO RELIQUIDATE AFTER YEAR FROM ENTRY IN CASE OF FRAUD.

The collector's power to reliquidate after the expiration of a year from entry in case of fraud stands upon the same ground as in case of protest; and, like it, has received uniform administrative, legislative, and judicial recognition.

10. CONSTRUCTION—"ABSENCE OF FRAUD," SECTION 21, ACT OF JUNE 22, 1874 (18 STAT. L., 186).

The statute makes the liquidation final "in the absence of fraud." This does not necessitate a *finding* of fraud by the collector to justify reliquidation, but directs him not to reliquidate in "the absence of fraud." If he *suspects* fraud, he can not say that fraud is *absent*. A *well-founded suspicion* of fraud is sufficient to move him to reliquidation.

11. COLLECTOR'S DECISION, CONTENT OF.

The law restricts a collector's findings to *rate and amount of duty*. He can make no conclusive finding as to fraud or anything else than *rate and amount* of duty. A reliquidation involves nothing except a different finding as to *rate and amount of duty*.

12. CONSTRUCTION—"ABSENCE OF FRAUD," SECTION 21, ACT OF JUNE 22, 1874 (18 STAT. L., 186).

The words "in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee" do not restrict the *fraud* to the owner, importer, agent, or consignee.

13. EVIDENCE—ADMISSIBILITY.

In the trial before the Board of General Appraisers of a protest by F. Vitelli & Son against a reliquidation on account of fraud alleged in the original liquidation indictments and records of acquittal in prosecutions by the United States against Joseph Vitelli for such frauds, without evidence connecting F. Vitelli & Son with Joseph Vitelli, have no probative force, and were properly excluded by the Board of General Appraisers.

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14. COLLECTOR'S CONTROL OF FRAUDULENT RETURN BY WEIGHER.

That a collector may set aside a fraudulent return by a weigher can not be questioned.

15. FRAUD VITIATES.

Fraud vitiates whatever it touches, and it may be said that a liquidation induced by fraud is *no* liquidation, and a fraudulent weigher's return *no* weigher's return.

16. EVIDENCE—PRESUMPTION—BURDEN OF PROOF.

In the trial before the Board of General Appraisers of a protest against a reliquidation made more than a year after entry, the legal presumption is, as in all cases, that the collector of customs acted within the powers conferred upon him by law, and the burden is on the protestant to show the invalidity of the reliquidation.

17. EVIDENCE—PRESUMPTION—BURDEN OF PROOF.

In the trial before the Board of General Appraisers of a protest against a reliquidation made more than a year after entry, evidence that the goods had been bought and sold by importers at weights greater than the entered ones, is sufficient to establish a prima facie case of fraud and put upon the protestants the burden of overcoming it.

18. EVIDENCE—BURDEN OF PROOF.

The burden of proving the material allegations of the complaint (protest) is on the plaintiff (protestant).

19. COLLECTOR'S POWER TO TAKE UNOFFICIAL EVIDENCE AS TO WEIGHTS.

There is no doubt, at least in cases where the weigher did not follow the law or was guilty of fraud, that the collector can proceed, or direct the weigher to proceed, to ascertain from the accounts of merchants to whom the merchandise was sold its true weights and accordingly liquidate.

20. DUE PROCESS OF LAW.

The customs administrative procedure, in case of reliquidation for fraud more than one year after entry, gives the importer ample notice and abundant opportunity to defend. The record shows that such notice and opportunity were had in these cases.

United States Court of Customs Appeals, May 29, 1916.

APPEAL from Board of United States General Appraisers, Abstract 36340 (T. D. 34742) and Abstract 36544 (T. D. 34744).

[Affirmed.]

Albert M. Yuzzolino for appellants.

Bert Hanson, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

Isadore Finkler, Amicus curiæ.

[Oral argument January 19, 1915, by Mr. Yuzzolino and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This litigation made its first appearance in this court in United States *v.* Vitelli & Son (5 Ct. Cust. Appls., 151; T. D. 34194). The record therein, which in all essential particulars is the same as the record herein, discloses that several importations of chestnuts and garlic by F. Vitelli & Son entered at the port of New York during the years 1905 to 1907 were liquidated for duties by the collector

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at that port during those years, which duties were paid. During the year 1912 the following proceedings were had:

Report of special deputy collector.

TREASURY DEPARTMENT, UNITED STATES CUSTOMS SERVICE,
OFFICE OF THE COLLECTOR,
Port of New York, July 8, 1912.

E. J. ALLENDORF, Esq.,
Deputy Collector, Seventh Division.

SIR: Satisfactory evidence having been produced before me showing that the returns of weight on the importations of F. Vitelli & Son, covered by the schedule below were false and fraudulent, I hereby declare the liquidations made thereon void, and direct that said entries be reliquidated on the basis of the corrected returns made by the United States weigher:

Vessel, *Koenig Albert;* arrival, October 4, 1905; entry No. 216546.

* * * * * * *

Respectfully,

H. C. STUART,
Special Deputy Collector.
W. B. A.

On July 22, 1912, F. Vitelli & Son made the following protest against said reliquidation of duties:

Protest 661651-35451.

RUEBSAMEN & YUZZOLINO,
COUNSELLORS AT LAW,
Bowling Green Building, 11 Broadway, New York, July 22, 1912.

Hon. WILLIAM LOEB, JR.,
Collector of the Port of New York, U. S. Custom House, New York City.

DEAR SIR: We have just received notices of the reliquidation of duty on the following entries made by us, and on which the Government claims to be entitled to a payment of increased duty:

Entry No. 290264; per S. S. *Hamburg;* duty paid, November 4, 1907; balance claimed to be due, $52.34.

* * * * * * *

Making a total of $1,037.31 increase of duty claimed by the Government on the foregoing entries.

We beg to hereby protest against the said action of the collector and against the reliquidation of the duty in each of the entries above mentioned, and against the payment of the said increase of duty claimed on the grounds, in respect to each and every one of the entries above specified, that the said reliquidations are improper and incorrect; that they are unlawful, and not made pursuant to the provisions of the statute; that the said reliquidation was not made within the period prescribed by the statute, in that the original entries and payment of duty on the importations upon which the said increase of duty is claimed were made from 4½ to upwards of 6 years prior to the date of the said reliquidations; that the said reliquidations are inaccurate and are based upon unreliable figures and data; and that the reliquidations, as originally made upon the above-named entries, are now final and binding upon all parties concerned, and beyond any dispute or scrutiny.

The undersigned also protest upon the ground that the above-mentioned reliquidations having been had, in each specific case, more than one year since the date of the original entry and payment of duty are of no effect under the provisions of the

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statute, for the reason that the importers deny that there was any fraud connected therewith; and they further protest upon the ground that the same subject matter involved in and brought up for issue by the said reliquidations has already been tried before a court of competent jurisdiction, and adjudged in favor of the undersigned, and for that reason the said subject matter is to be considered as *res adjudicata* in their favor.

The importers also protest against said reliquidations and each of them on the ground that the Board of General Appraisers is without jurisdiction to pass upon the issues raised thereby, and particularly that they have no jurisdiction to pass upon any issue of fraud which may be raised by the said reliquidations, by reason of their being made more than one year after the original entry and payment of duty.

We therefore protest against any claim of payment of the said sum of $1,037.31 as an increased duty to the Government based upon the foregoing alleged reliquidations.

Respectfully, yours,

F. VITELLI & SON,
3 President Street, Brooklyn, N. Y.
RUEBSAMEN & YUZZOLINO,
Attys. for F. Vitelli & Son, No. 11 Broadway, Borough of Manhattan, New York City.

Original received July 24, 1912.
Indorsed: Customhouse, New York. Received July 24, 1912.

Thereafter, on July 26, 1912, the importers sent the following notice to the collector of customs at that port:

Letter from attorneys for importers.

RUEBSAMEN & YUZZOLINO,
COUNSELLORS AT LAW,
Bowling Green Building, 11 Broadway, New York, July 26, 1912.

Hon. WM. LOEB, Jr.,
Collector of Port of New York,
United States Customhouse, New York.

In re F. Vitelli & Son.

DEAR SIR: We beg to hereby notify you that our clients, Messrs. F. Vitelli & Son, of No. 3 President Street, Brooklyn, have to-day made a payment to the collector of the port of New York of $1,037.31 as the amount of increased duties claimed by the Government, of which they were notified on July 12, 1912. Said payment of $1,037.31 is made under protest, the grounds of which were fully set forth in the written protest filed in your office on July 24, 1912.

Very respectfully,

RUEBSAMEN & YUZZOLINO,
Attorneys for F. Vitelli & Son.

August 17, 1912, the collector, under articles 1073 and 1074, Customs Regulations of 1908, transmitted the protest and record before him to the Board of General Appraisers for review and decision by the following:

Report of the collector.—August 17, 1912.

Respectfully referred to the Board of United States General Appraisers for decision.

The payment forming the subject of the protest was made in satisfaction of the claim of the United States for increased duties found to be due on certain importations of chestnuts and garlic.

Evidence was produced to show that the returns of the United States weighers were false and fraudulent. Hence the liquidations were declared void and reliquidations made on the true weights as found in the amended returns of the United States weigher.

The limitation for the reliquidation of entries found in section 21, act of June 22, 1874, does not apply in cases of fraud. Note letter herewith, dated July 8, 1912, of Mr. H. C. Stuart, directing reliquidation. Note also the indorsement of the United States weigher on the returns attached to each entry.

The assessment of duty as made is affirmed. Protest was filed within statutory time.

WM. LOEB, JR., *Collector*.

The record also recites that on each entry there was attached the original weigher's return, with a statement on it signed by the United States weigher, as follows: "This return is hereby declared void because of fraud. Reliquidate on basis of corrected return attached." The record further discloses that upon each entry the following order is written: "Reliquidate and assess duty upon the basis of the corrected return of the United States weigher attached, the original return being false and fraudulent."

The original and the amended weigher's returns are a part of the record and were before the board and the court in that case as well as in this. From these this court found and recited as facts in United States *v.* Vitelli & Son (5 Ct. Cust. Appls., 151; T. D. 34194) as follows:

These amended returns and the reliquidation thereon relate only to garlic and chestnuts, while some of the entries, 14 in number, cover in addition other merchandise. Upon these corrected weigher's returns are written statements to the effect that the greater part of the reliquidated merchandise had been traced from the importers to various persons who had weighed the same and kept a record of such weights, with which the weights shown in the corrected returns substantially correspond; that in some instances the merchandise had been paid for upon the basis of such weights; and that in at least one case the importers had billed the goods at 46,253 pounds, which was some 3,500 pounds greater than the weight thereof as originally returned by the weigher. We have examined some of the files relating to all these 14 entries, and therefrom it appears that the corrected returns increase the weights above those originally returned in amounts varying from 1,000 to 16,000 pounds in each of such entries.

The record in suit No. 1474 in this case differs only in that precisely parallel action was had by the collector of customs, wherein he himself acted, instead of by a deputy collector of customs.

At the original hearing before the Board of General Appraisers much discussion was had as to whether the burden of proof was upon the importers or upon the Government, in view of the fact that the right of the collector to reliquidate more than one year after the original liquidation, there being no protest in that case, could be exercised only in the presence of fraud. Counsel for the importers, however, offered in evidence certain indictments and the records of acquittal of the indicted person, claiming that these records made a

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case *res adjudicata.* Upon argument the board excluded the indictments and records of acquittal and took the question of the burden of proof under advisement. On December 5, 1912, the board made an interlocutory order holding that the burden of proof was upon the Government, and duly set the case for further trial on December 18, 1912. Thereupon all parties appeared, counsel for the Government noted an exception to the ruling of the board that the burden of proof was upon the Government to prove fraud, and the case was submitted by all parites. The decision of the board followed, in accordance with its interlocutory order sustaining the protests. Upon appeal to this court, February 10, 1914, after reciting the foregoing facts as shown by the record before the board, this court reversed their decision, holding that upon the record as presented to the board the burden of proof was upon the importers.

On February 17, 1914, upon appearance of the parties before this court, motion was duly made by the appellees for a modified order remanding the case to the board for a new trial and an amendment of the court's previous decision accordingly, which motion was granted, and on February 19, 1914, mandate of the court to the board was accordingly made. On May 25, 1914, pursuant to the above mandate the case was called for hearing by the board, all the parties appearing. Thereupon counsel for the importers made the following statement:

Mr. YUZZOLINO. In these cases up to the last time they were on the docket I had intended to go into the testimony and offer evidence and proof of the weights, etc. I have now decided not to do that and am simply going to make offers on the record, then make some objections on the record, and submit on that. I offer, first, the certified copies of the indictments found by the Circuit Court of the United States for this district, three of them, together with a certified copy of the records of acquittal.

Objection was renewed by counsel for the Government to the admission of the indictments and records of acquittal, which objection was sustained by the board, to which counsel for the importers duly excepted, stating:

Mr. YUZZOLINO. The importer excepts to the ruling of the board excluding the indictments on the ground that they show conclusively the nonexistence of fraud in the making of the entries, and this being the issue, *i. e.*, fraud in making these entries, * * *.

While the importers offered no further evidence in the case, they made the following statement:

The importer also excepts to the ruling of the court to the effect that the burden is upon him to show nonexistence of fraud in these cases, upon the ground that it imposes upon him an unlawful, unreasonable, and impossible burden, as a condition to his availing himself of the benefits of section 21 of the act of June 22, 1874, and therefore deprives him of his property without due process of law, and is in violation of his rights under the United States Constitution.

Accordingly the board on August 21, 1914, following the previous decision of this court in United States *v.* Vitelli (5 Ct. Cust. Appls.,

151; T. D. 34194), overruled the importers' protests. The importers duly appeal to this court for a reversal of that decision.

After submission of the case, by permission, counsel for the appellants bring to the attention of the court decisions in United States *v.* Sherman & Sons Co. (237 U. S., 146), decided by the Supreme Court of the United States; also the decision of the United States District Court for the Southern District of New York, United States *v.* Federal Sugar Refining Co. (211 Fed., 1016), both claimed by appellants to be decisive of this case.

The questions herein involved are of far-reaching importance in the administration of the customs laws, involving the right of a collector of customs to reliquidate an entry in any case after one year after the original liquidation; the right of the collector to reliquidate at any time after the goods have gone out of customs possession or control; and the respective jurisdictions of the Board of General Appraisers and the United States District Courts in the matter of the collection of the customs revenues in cases where reliquidation has been made after one year after the original liquidation and in cases where the goods have gone beyond the possession or control of the Government. In view of the far-reaching importance of these appeals and the claimed conflict of the cited decisions, the Attorney General has, under section 195 of the judicial code, filed with this court a certificate to the effect that the case is one of such importance as to render expedient its review by the Supreme Court. In this view and that the subject may be viewed in all its bearings this court herein gives more extended consideration to the case than otherwise would be had.

The court is of the opinion that there are decisive differences between both the facts and the legal aspects of this and the two cases urged. These differences will later be considered. Preliminarily certain contentions by appellants should be noted.

More by innuendo than argument action by a special deputy collector is questioned. It is sufficient to say that such, if sound, would only affect suit No. 1464 herein, for in suit No. 1474 action was had by the collector in person. That all the powers and duties of collectors of customs are equally vested in their special deputies is well settled. Revised Statutes (secs. 2625, 2630, and 2633); article 1434, Customs Regulations of 1908; Falleck *v.* Barney (8 Fed. Cas., 974, No. 4625); Lehmaier *v.* Maxwell (15 Fed. Cas., 250, No. 8214); Schmaire *v.* Maxwell (21 Fed. Cas., 700, No. 12460); United States *v.* Barton (24 Fed. Cas., 1025, No. 14534); Chadwick *v.* United States (3 Fed., 750); Frelinghuysen *v.* Baldwin (12 Fed., 395). Moreover, section 13 of the customs administrative act of 1890, under which action in these cases was had, expressly provides that "the collector or *person acting as such* shall ascertain,

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fix, and liquidate the rate and amount of the duties." The affirmation by the collector herein (suit No. 1464) should be regarded as it imports, his letter of transmittal to the Board of General Appraisers, Customs Regulations of 1908, articles 1073 and 1074, stating as therein required, "the reason which governed him in the assessment of duty."

Prelusively, consideration will be had of the apposite general fundamentals. Primarily, the issues here concern the power of a collector of customs to liquidate and reliquidate entries. Whence does he derive that power generally and particularly in these cases? It has been often said that the exercise of the power of reliquidation by a collector of customs is an implied power finding no warrant in the express law, but founded upon implication from section 21 of the act of June 22, 1874, *infra*.

The court is of the opinion that such is not accurate, that the contrary is true and that logic and the authorities will support the conclusion *that the power of the collector to make liquidations and reliquidations is rested upon express statute.*

There are in the statutes grants of power to liquidate and also limitations upon its exercise which should be carefully distinguished. That power as given by the granting statutes was and is unlimited as to the time or the number of liquidations. The act of reliquidation, therefore, is within the grant of power of liquidation originally granted without qualifications as to time or repetition.

This power of collectors of customs to liquidate or, to be exact, to "estimate the amount of the duties payable * * *, indorsing the said amount upon the respective entries" of imported merchandise, was originally granted by section 21 of the act of Congress, March 2, 1799 (1 Stat. L., 627), as follows:

> SEC. 21. * * * The collector * * * shall receive the entries of all ships or vessels and of the goods, wares, and merchandise imported in them; shall, together with the naval officer where there is one, or alone where there is none, estimate the amount of the duties payable thereupon, indorsing the said amount upon the respective entries; shall receive all moneys paid for duties, and take all bonds for securing the payment thereof; * * *.

That language was in all essential particulars made the language in part of section 2621 of the Revised Statutes, reading:

> SEC. 2621. At each of the ports * * * it shall be the duty of the collector:
>
> * * * * * * *
>
> Third. To receive the entries of all ships or vessels, and of the goods, wares, and merchandise imported in them.
>
> Fourth. To estimate, together with the naval officer where there is one, or alone where there is none, the amount of the dues payable thereupon, indorsing such amount upon the respective entries.
>
> Fifth. To receive all moneys paid for duties, and take all bonds for securing the payment thereof.
>
> * * * * * * *

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Without express repeal section 13 of the customs administrative act of June 10, 1890 (26 Stat. L., 131), provided:

SEC. 13. * * * And the collector or the person acting as such shall ascertain, fix, and liquidate the rate and amount of the duties to be paid on such merchandise, and the dutiable costs and charges thereon, according to law.

The tariff act of August 5, 1909 (36 Stat. L., 11), subsection 13 of section 28 thereof, and the tariff act of October 3, 1913 (38 Stat. L., 114), subsection M of section 3 thereof, reenacted this provision *in hæc verba*. While these cases arose under the act of 1897 (30 Stat. L., 151), the reenactments serve as a congressional adoption of the construction given the earlier acts.

Acting under the authority of these words, unchanged until 1890 and then if anything enlarged in scope, from the foundation of our Government to date collectors of customs have liquidated and reliquidated entries. If there were any doubt as to the intended extent of this grant of power, each and every one of these limiting acts is a legislative declaration of its existence to the extent of the limitation, else why the idle legislation?

The first acts of limitation were section 5 of the act of March 3, 1857 (11 Stat. L., 192), and sections 14 and 15 of the act of June 30, 1864 (13 Stat. L., 202), providing that the decision of the collector of customs "shall be final and conclusive against the owner, importer, consignee or agent of" imported merchandise unless protested as therein prescribed to the Secretary of the Treasury, etc.

The customs administrative act of June 10, 1890 (26 Stat. L., 131), section 14, subsection 14 of section 28 of the act of August 5, 1909 (36 Stat. L., 11), and subsection N of section 3 of the act of October 3, 1913 (38 Stat. L., 114), are in essentially the same language, reading, "that the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, * * * shall be final and conclusive against all *persons* interested therein, unless the owner, importer, consignee, or agent of such merchandise" should as therein prescribed protest to the Board of General Appraisers with right thereafter to appeal to the courts. The language, "shall be final and conclusive against all *persons* interested therein," is common to all these acts. It has been uniformly held, and never contrarily, to be a limitation upon the remedies of the *importers* and *not* the powers of collectors. United States *v.* Phelps *et al.* (17 Blatch., 312; 27 Fed. Cas., 521, No. 16039); United States *v.* Leng (18 Fed., 15); United States *v.* Mexican International R. Co. (C. C. A., 151 Fed., 545); Calhoun *v.* United States (184 Fed., 499); *In re* J. W. Hampton, jr., & Co., G. A. 1304 (T. D. 12655); *In re* Rheinstrom Bros., G. A. 1338 (T. D. 12689); *In re* Henry Schmidt, G. A. 1798 (T. D. 13496); *In re* Geo. Knowles & Son, G. A. 2305 (T. D. 14459); *In re* Foote, Reed & Co., G. A. 3810 (T. D. 17935). Repeated reenactments have

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legislatively adopted this contemporary construction. United States *v.* Midwest Oil Co. (236 U. S., 459, 472); Tucker *v.* Oxley (5 Cranch, 9 U. S., 34); Robinson & Co. *v.* Belt (187 U. S., 41); Copper Queen Mining Co. *v.* Arizona Board (206 U. S., 474); Fairbank *v.* United States (181 U. S., 283). It was philosophic that Congress having given the importer the right not given collectors to correct errors of liquidation by protest Congress did not wish to deny the Government the right to correct such errors, which could only be done by reliquidation. These acts, however, were of limitation only in so far as they deprived the owner, etc., of the power after a prescribed time to enforce a contrary or defend against a liquidation.

The entire breviary of laws granting and limiting *the power of collectors* of customs to estimate or reestimate the rate and amount of duties upon imported merchandise embraces but a single paragraph directly limiting that power, to wit, section 21 of the act of June 22, 1874 (18 Stat. L., 186), as follows:

SEC. 21. That whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free of duty and such settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties.

That act, though treating extensively of the duties of collectors, in no particular expressly added to his power of liquidation.

There is here presented a striking example of legislative interpretation of, as distinguished from the coordinate rule of legislative adoption of, a statute as construed by the courts or administered by departments. The former rule, equally well if not more logically established, is expressed by the Supreme Court in Cope *v.* Cope (137 U. S., 682, 688), that—

Several acts of Congress, dealing * * * with the same subject matter, should be construed not only *as expressing the intention of Congress* at the dates the several acts were passed, but *the later acts should also be regarded* as legislative interpretations of the prior ones. United States *v.* Freeman (3 How., 556, 564); Stockdale *v.* Insurance Co. (20 Wall., 323).

Under said section 21 the fact that the statute did not commence to run until after one liquidation, the necessary implication is of a power to make a second liquidation, else the statute is entirely nugatory. The statute concededly does not grant or invest a power to liquidate. The necessity for and the enacted limitation upon the exercise of that power, and its repetition as herein provided, is a legislative interpretation that the original grant included and vested the power of reliquidation in the collector. The power of the collector to liquidate and reliquidate Congress here assumes and interprets

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resides in the previous unlimited express statutory grants; its restrictions in the limiting acts. Calhoun *v.* United States (184 Fed., 499); United States *v.* Phelps *et al.* (17 Blatch., 312; 27 Fed. Cas., 521, No. 16039).

The rule is elementary and fundamental that long-continued departmental practice and judicial construction of statutes while not absolutely controlling are not to be disregarded without the most cogent and persuasive reasons. . United States *v.* Midwest Oil Co. (236 U. S., 459); Edwards *v.* Darby (12 Wheat., 25 U. S., 206); Pennoyer *v.* McConnaughy (140 U. S., 1); Copper Queen Mining Co. *v.* Arizona Board (206 U. S., 474), and numerous cases therein cited. That a construction of an act—and this was said of the act of June 22, 1874 (18 Stat. L., 186)—by the Treasury Department, followed for many years without any attempt by Congress to change it should be followed by the Supreme Court, see Robertson *v.* Downing (127 U. S., 607).

There is herein questioned not only (1) the existence of any express statutory authority for the collector to reliquidate, but also (2) the power of the collector to reliquidate within a year after entry when the goods have gone beyond his possession or control, and (3) the right of reliquidation for fraud in any case after one year after entry. This court is of the opinion that a full review of the authorities is convincing beyond question that not only are all these powers vested by express law in the collector, as heretofore considered, but that such has been the uniform legislative, departmental, and judicial construction of those statutes from the foundation of the Government.

Not only was the enactment of section 21 of the act of June 22, 1874 (18 Stat. L., 186), a legislative interpretation of this preexisting power in collectors of customs long prior to that legislation, but by and from the decisions of earliest record to the present these acts have been uniformly and without exception held to empower collectors to liquidate and reliquidate within and after one year from entry and without any limitation upon that power save and except as follows:

(1) *Prior to the enactment of section 21 of the act of June 22, 1874 (18 Stat. L., 186), there was no limitation in this particular upon a collector and he could reliquidate at any time.* In a very early case the powers of a collector of customs in these particulars were ably amplified. This case has with great frequency been cited, quoted, and followed and on this point has never been questioned or overruled. In that case the duties had been twice previously liquidated. The court speaks of the powers of the collector *assuming them otherwise vested* than by the acts of 1864 (13 Stat. L., 202) and 1874 (18 Stat. L., 186), which are characterized as limitations upon that power. The following language of Judge Blatchford therein is

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instructive (United States *v.* Phelps *et al.*, 17 Blatch., 312; 27 Fed. Cas., 521 No. 16039):

It is well settled that the duties upon all goods imported constitute a personal debt due to the United States from the importer; that the consignee is, for this purpose, treated as the owner and importer; that such debt is independent of any lien on the goods and of any bond given for the duties; and that the right of the Government to the duties accrues when the goods have arrived at the proper port of entry. Meredith *v.* United States (13 Pet., 38 U. S., 486). By section 2931 of the Revised Statutes the decision of the collector, in liquidating duties, as to the amount of duties on imported goods, is made final and conclusive against all persons interested in such goods, unless notice in writing of dissatisfaction with such decision is given to the collector by the importer within 10 days after the liquidation, and unless within 30 days after the liquidation there is an appeal by the importer from the liquidation to the Secretary of the Treasury. Such liquidation is not made final and conclusive as against the United States. There is nothing in the section which forbids a reliquidation or a new decision by the collector, even after the payment of all the duties fixed by a prior liquidation, or even after the refunding of money deposited beyond the amount of duties so fixed; or which forbids a new decision by the collector as to the law on the same facts, or a new decision as to facts, based on additional or new or different facts. This view is confirmed by the enactment of section 21 of the act of June 22, 1874 (18 Stat., 190), which is as follows: "Whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free of duty and such settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties." This provision was in force when the transactions in this case took place. It applies to the United States. The expression "all parties" includes the United States. By section 2931 of the Revised Statutes there was no limitation imposed on the power of the collector to reliquidate when such reliquidation was in the interest of the Government. But by section 21 of the act of 1874 *a limitation is imposed on such power*, so that after the entry of the goods and after the liquidation and payment of duties on them and after the delivery of the goods to the importer such settlement of duties, if there be no fraud and no protest by the importer, is, after one year from the entry, final and conclusive even as respects the Government. In the present case the suit was brought before the one year expired. The collector, therefore, had power to make the reliquidation of July 20, 1878.

That the power of the collector to reliquidate was unlimited prior to the act of June 22, 1874 (18 Stat. L., 186), is well established. Dumont *v.* United States (98 U. S., 142); Westray *v.* United States (18 Wall., 85 U. S., 322); United States *v.* Calhoun (184 Fed., 499); United States *v.* Leng (18 Fed., 15); United States *v.* Phelps *et al.* (17 Blatch., 312; 27 Fed. Cas., 521, No. 16039); Watt *v.* United States (15 Blatch., 29; 29 Fed. Cas., 441, No. 17292); United States *v.* Cousinery *et al.* (7 Ben., 251; 25 Fed. Cas., 677, No. 14878); United States *v.* Campbell (10 Fed., 816; T. D. 8695.) So where the act does not apply. (T. D. 7376); *In re* Paris, Allen & Co., G. A. 2411 (T. D. 14689); T. D. 16193; *In re* Ford, G. A. 3167 (T. D. 16338).

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(2) *That the power of reliquidation exists where the goods have gone beyond the possession or control of the collector has been the subject of equally uniform decisions.*

Upon principle, it is a strange doctrine to judicial or quasi-judicial procedure that the validity of the proceedings depends upon the ultimate ability to satisfy the judgment rendered or order made.

That possession and control of the goods were necessary to exercise of the power of reliquidation was not the intention of Congress is evidenced by its authorization of the collector to take a bond for payment of duties. (R. S. U. S., 2621.)

This doctrine is concisely stated in United States *v.* Mexican International Railroad Co. (C. C. A., 151 Fed., 545):

> Before "the expiration of one year from the time of entry" the settlement of duties is not conclusive on the Government. Before the expiration of the one year the collector may reliquidate the assessment, although the duties first assessed have been paid *and the goods withdrawn for consumption.*

Such has been the uniform interpretation by the courts and Treasury Department of the powers of the collector. Beard *v.* Porter (124 U. S., 437); Abner Doble Co. *v.* United States (119 Fed., 152); United States *v.* Mexican International Railroad Co. (C. C. A., 151 Fed., 545); Pacific Creosoting Co. (C. C. A., 196 Fed., 35); United States *v.* Tiffany & Co. (C. C. A., 151 Fed., 473); Louisville Pillow Co. *v.* United States (C. C. A., 144 Fed., 386); Neresheimer *v.* United States (131 Fed., 977); Knowles & Sons *v.* United States (122 Fed., 971); United States *v.* Cobb *et al.* (11 Fed., 76); United States *v.* Campbell (10 Fed., 816); United States *v.* Comarota (2 Fed., 145); United States *v.* Phelps *et al.* (17 Blatch., 312; 27 Fed. Cas., 521, No. 16039); T. D. 3972; T. D. 7376; *In re* Hampton, jr., & Co., G. A. 1304 (T. D. 12655); *In re* Rheinstrom Bros., G. A. 1338 (T. D. 12689); *In re* Schmidt, G. A. 1798 (T. D. 13496); *In re* Knowles & Son, G. A. 2305 (T. D. 14459); *In re* Foote, Reed & Co., G. A. 3810 (T. D. 17935); *In re* Hampton, jr., & Co., G. A. 1304 (T. D. 12655), approved in 21 Opinions of Attorney General, 334; *In re* Wyman & Co., G. A. 6536 (T. D. 27887); *In re* Forbes & Wallace, G. A. 5118 (T. D. 23655). Of course this power includes that to so reliquidate for fraud or any other cause affecting the rate or amount of duty.

(3) *That a collector of customs can, after a prior liquidation, reliquidate within one year after entry has been from the earliest period assumed and decided.* Robertson *v.* Downing (127 U. S., 607); Beard *v.* Porter (124 U. S., 437); Abner Doble Co. *v.* United States (119 Fed., 152); United States *v.* Fox *et al.* (53 Fed., 531); United States *v.* Frazer (10 Ben., 347; 25 Fed. Cas., 1207, No. 15161); T. D. 3972; T. D. 8398; T. D. 8695; *In re* Fleitmann & Co., G. A. 738 (T. D. 11563); *In re* Strauss, Sachs & Co., G. A. 2743 (T. D. 15309); *In re* Hartman & Darling, G. A. 3610 (T. D. 17436); *In re* Forbes &

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Wallace, G. A. 5118 (T. D. 23655); *In re* Stone & Co., G. A. 5406 (T. D. 24623); *In re* Wyman & Co., G. A., 6536 (T. D. 27887); *In re* Hampton, jr., & Co., G. A. 1304 (T. D. 12655); T. D. 16503.

This point is well established by the single fact that the Treasury regulations so authorizing have long been in full force and effect and the power unquestioned.

The regulations of the Treasury Department from 1881 to date, construing the statutes granting powers to collectors to reliquidate, have directed them, upon receipt of protest in their opinion well taken, to reliquidate. T. D. 4972; Customs Regulations of 1884 (art. 362); Customs Regulations of 1892 (art. 931); Customs Regulations of 1899 (arts. 1455 and 1463); Customs Regulations of 1908 (art. 1072, now effective); *In re* Hampton, jr., & Co., G. A. 1304 (T. D. 12655); T. D. 16503.

"When there has been a long acquiescence in a regulation" (Treasury) "and by it rights of parties for many years have been determined and adjusted, it is not to be disregarded without the most cogent and persuasive reasons. United States *v.* Hill (120 U. S., 169, 182); United States *v.* Philbrick (120 U. S., 52, 59); Brown *v.* United States (113 U. S., 568, 571)." Robertson *v.* Downing (127 U. S., 607, 613).

(4) *At present the law prescribes no time limit within which the collector shall make his original liquidation.* Pacific Creosoting Co. *v.* United States (C. C. A., 196 Fed., 35); Beard *v.* Porter (124 U. S., 437); Abner Doble Co. *v.* United States (119 Fed., 152); Gandolfi *et al.* (C. C. A., 74 Fed., 549); United States *v.* De Rivera *et al.* (73 Fed., 679); United States *v.* Leng (18 Fed., 15); United States *v.* Phelps *et al.* (17 Blatch., 312; 27 Fed. Cas., 521, No. 16039); T. D. 7376.

(5) *It has been uniformly held or assumed under the act of June 22, 1874 (18 Stat. L., 186), that when liquidation is had and protest made, the collector can reliquidate more than one year after entry.* United States *v.* Whitridge (197 U. S., 135); United States *v.* Tiffany & Co. (C. C. A., 151 Fed., 473); Cassel *v.* United States (146 Fed., 146); Gulbenkian *v.* Stranahan (158 Fed., 836); United States *v.* Dickson (C. C. A., 139 Fed., 251); United States *v.* Phelps *et al.* (17 Blatch., 312; 27 Fed. Cas., 521, No. 16039); T. D. 8583; T. D. 16193. Statutes in later acts *directing* the collector to reliquidate protests after final decision thereon in accordance therewith, we shall hereafter show, are not exceptions to the exercise of an existing power in the collector, but assume the existence of that power and direct its exercise in accordance with the mandate of supervising authorities or tribunals.

It may well be doubted if the judicial history of the Government affords another instance wherein such a long-continued, uniform,

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and absolutely unquestioned judicial and administrative interpretation and practice under a statute or of its granted powers has obtained. Not only has there here been the legislative interpretation of those preexisting powers by the act of June 22, 1874 (18 Stat. L., 186), but the uniform judicial and administrative interpretations enumerated extending from the earliest date to the present, and also the subsequent and repeated legislative approval of those judicial and administrative interpretations, at least from Revised Statutes 2621 to and inclusive of section 13 of the customs administrative act of 1890 (26 Stat. L., 131), subsection 13 of section 28 of the tariff act of 1909 (36 Stat. L., 11), and subsection M of section 3 of the tariff act of 1913 (38 Stat. L., 114), has been to the same effect.

Whether we rest these powers of reliquidation long exercised by collectors of customs, as aforesaid, in express or implied statutory authority, if there is any virtue in the philosophy of the rule of long-continued uniform interpretation, usage, and practice, which makes for the safety and repose of commerce and the rights of man, herein is afforded a vindicating exemplar. The point may well be concluded with the language of the upreme Court in United States *v.* Midwest Oil Co. (236 U. S., 459, 472):

> It may be argued that whil these facts and rulings prove a usage they do not establish its validity. But go ernment is a practical affair intended for practical men. Both officers, lawmakers, and citizens naturally adjust themselves to any long-continued action of the executive department, on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that in determining the meaning of a statute *or the existence of a power* weight shall be given to the usage itself, even when the validity of the practice is the subject of investigation.
>
> This principle, recognized in every jurisdiction, was first applied by this court ui the often cited case of Stuart *v.* Laird (1 Cranch, 299, 309). There, answering the objection that the act of 1789 was unconstitutional in so far as it gave circuit powers to judges of the Supreme Court, it was said (1803) that "*practice and acquiescence under it for a period of several years, commencing with the organization of the judicial system, affords an irresistible answer and has indeed fixed the construction.*" It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled.

Robinson & Co. *v.* Belt (187 U. S., 41); Copper Queen Mining Co. *v.* Arizona Board (206 U. S., 474); Fairbank *v.* United States (181 U. S., 283).

Other acts *in pari materia* claimed by appellants to *imply* a contrary view in fact support the views heretofore expressed. These acts read in conjunction with those of grant and limitation upon the powers of a collector of customs to liquidate and reliquidate conduce to the same conclusion, the contrasted provisions of those acts being explanatory of these. *The Amelia* (1 Cranch, 5 U. S., 1); Merritt *v.* Cameron (137 U. S., 542); Pollard *v.* Kibbe (14 Pet., 39 U. S., 353); Nobles *v.* Georgia (168 U. S., 398).

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It is claimed that the act of March 3, 1875 (18 Stat. L., chap. 136, p. 469), authorized reliquidation for clerical errors, and hence implied absence of a general power of reliquidation in the collector. We think the contrary. Prior to this act the Secretary of the Treasury, by sections 3012½ and 3013 of the Revised Statutes, had unlimited power of *refund of duties* unascertained and ascertained, depending solely upon his judgment that they should be repaid. The act of March 3, 1875, was entitled, "*restricting the refunding* of customs duties," etc. It was addressed to and restrictive of the powers of the Secretary of the Treasury to make refunds of customs duties. It then provided "that this act *shall not affect* the refund of excess of deposits based on estimated duties *nor prevent* the correction of errors in liquidation," etc. How a provision expressly declared "shall not affect" "nor prevent" exercise of a power impliedly grants such we can not understand. Obviously, however, it presupposes the existence of and preserves a preexisting power which was probably being exercised by the Secretary of the Treasury, and this act was so construed. (21 Op. Atty. Gen., 251.) That it did not affect the power of reliquidation in the collector was held in United States *v.* Phelps *et al.* (17 Blatch., 312; 27 Fed. Cas., 521, No. 16039). That the act related to the Secretary of the Treasury and was vesting in another official than the collector power *to grant certain refunds* arising out of, without changing or affecting, liquidations, is made certain by the amendatory act, section 24 of the act of June 10, 1890.

Other acts or parts thereof *in pari materia* also afford instruction. Sections 14 and 15, act of June 10, 1890 (that being the act under which these reliquidations were made), provide that after final decision of the Board of General Appraisers or courts the papers shall be transmitted to "the proper collector or person acting as such, who *shall* liquidate the entry *accordingly*," etc. These provisions do not *empower* but *direct* reliquidation by an officer already having that power, who has previously liquidated upon a different basis. The provision assumes existence of that power in the collector and none else and provides that upon mandate it shall be exercised by the collector according to the decision of another and in a manner different from its previous exercise. Without this provision of law under what authority could the collector be *compelled* to reliquidate?

Section 25 of the tariff act of 1894 (28 Stat. L., 552), provided that the Secretary of the Treasury should estimate and proclaim the value in our money of foreign coins and that those values "shall be followed in estimating the value" of all imports, etc., and "*Provided*, That the Secretary of the Treasury may order the reliquidation of any entry at a different value," etc. That statute does not *empower* reliquidation, but places in the power of the Secretary of

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the Treasury superior authority to *direct* reliquidation by the collector so authorized by law, regardless of the opinion of or other superior authority over the collector. This precise point is confirmed and the compulsory power indicated by the familiar history of the proceedings under that section. United States *v.* Whitridge (197 U. S., 135).

Revised Statutes, section 2857, provides that change may be made of the destination of goods by entry at the port of arrival and, where the triplicate invoice has not arrived, a certain routine, "and the duty shall not be finally liquidated until such triplicate, or a certified copy thereof, shall have been received. Such liquidation, however, shall not be delayed longer than 18 months from the time of making such entry." Here again Congress, assuming an unlimited power of liquidation in the collector, by statute directs its exercise in words of *direction* only and not of *authorization*. These various acts, however, authorizing various officials to *direct* and requiring the collector as late as 18 months after entry to liquidate *as directed* are instructive that Congress did not confine that power to the period within which the goods remained in the possession or control of the collector, and in every instance assumes an unlimited power previously vested and existing in the collector to so reliquidate.

This exceptionally consistent construction of the statutes *in pari materia* rests upon the clear and unchanged language of the empowering law and what would seem equally clear language of section 21 of the act of June 22, 1874, as viewed, treated, *and interpreted* by Congress in a series of enactments *in pari materia* extending over a period of almost forty years. This consistent and uniform view of Congress is instructive. Cope *v.* Cope (137 U. S., 682–688).

Elementally, an unlimited power of liquidation (uniformly construed as, if not literally, including the power of reliquidation) having been vested in the collector by previous acts of Congress, this restraining provision upon those powers was enacted. Logically if there were exceptions to the restraining act the powers of the collector in the instances of those exceptions continued unrestrained and unlimited. These exceptions were two—in the absence of a protest and in the absence of fraud. They are coequal in every respect. All conceded and it has been uniformly held (cases *supra*) that, where a protest is filed, the power of the collector to reliquidate is not made final in the year, that the act of 1874 does not apply to such cases, and that the collector can reliquidate whenever the protest is out of the case. (Cases *supra*.) The limitations upon the extent of such a reliquidation are not here in question or decided. The right and power and its preservation by the statute alone are important and declared. Wherein does the other exception differ? If the presence of a protest makes the act inapplicable, why does not "fraud" do likewise? The

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two must stand or fall together. If there is power in the collector to reliquidate after one year after entry in cases of protests, which is conceded by all, by those exact words that power is reserved to him in cases of fraud. The cases are so exactly parallel and the statute so unmistakably expounds itself that argument as to its meaning and effect would be offensive to common, not to say legal, intelligence.

In United States *v.* Sherman & Sons Co. (237 U. S., 146), no doubt because, as shown by the briefs, so represented to the court and not controverted, it was assumed as a fact, speaking of section 21 of the act of June 22, 1874, and stated:

> It is a significant fact that although the act has been in force for more than 40 years there are only two instances reported in which the collector, after the expiration of one year, has attempted to reliquidate because of the existence of fraud. Those two cases—United States *v.* Vitelli, Court of Customs Appeals (1914), and United States *v.* Federal Sugar Co. (211 Fed., 1016)—are of recent date and in direct conflict with each other.

Instances of reliquidation by collectors for fraud covering a period of more than a quarter of a century past*are* reported.

There is reported in T. D. 16193, of date June 27, 1895, the case of Gandolfi *et al.*, wherein cheese imported and entered by pro forma invoice in November, 1891, was *reliquidated March 7, 1893*, which action by the collector in suit to recover the balance was in part justified by the United States upon the ground that "sufficient had been proved to raise a presumption of fraud, which in itself prevented the year from running, as provided in section 21 of the act of June 22, 1874."

This decision shows not only the fact that the collector so acted but that the Treasury Department approved and adopted this action of the collector. Subsequently, as shown, this course was approved by the Treasury Department.

In G. A. 3167 (T. D. 16338) is reported an instance wherein the collector at the port of Boston in October, 1894, reliquidated entries of bags previously liquidated in September, 1892, and January, 1893, more than a year thereafter, upon the ground of fraud. Upon protest and trial section 21 of the act of June 22, 1874, being urged as a limitation upon the action of the collector the board found fraud and sustained the collector.

In G. A. 3842 (T. D. 17967) an entry on October 8, 1895, of black hatters' plush at the port of Cleveland, Ohio, was liquidated by the collector at that port October 18, 1895, and reliquidated December 10, 1896, more than a year after entry. It is reported in the board's decision that "the act of reliquidation, subject of complaint, was performed by the collector under section 21 of the act of June 22, 1874, on the ground that appellants were guilty of misrepresentation or fraud in making said entry." On trial the board conceded the law

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to be that such a liquidation would be valid, but found against the Government on the fact of fraud in the case.

In 1905–1907 F. Vitelli & Son imported at New York chestnuts and garlic, which were liquidated during those years. Subsequently and during the year 1912 the collector reliquidated upon the alleged ground of fraud and reported such and that by reason thereof section 21 of the act of June 22, 1874, did not apply. The importers protested, denying the existence of fraud, but in no way challenging the legal right of the collector to so liquidate. On trial before the Board of General Appraisers it was held that the collector could, under section 21, *supra*, reliquidate where there was fraud in the case, but that the burden to prove such before the board was upon the Government. G. A. 7418 (T. D. 33115). The Government appealed to this court. Herein the right of the collector to reliquidate after one year where there was fraud in the case was unchallenged, was not in issue, nor decided. The sole issue decided was as to the burden of proof. A new trial was granted. United States *v.* F. Vitelli & Son (5 Ct. Cust. Appls., 151; T. D. 34194). Further, neither on rehearing before the board nor on this appeal to this court, nor until presentation to the Supreme Court in the case of Sherman & Sons Co., was ever the right of the collector to reliquidate one year after entry, where there was fraud, challenged or questioned. After that decision, *and by supplemental brief*, for the first time in this case and court was that issue made. Until that day, May 1, 1915, the right of a collector to reliquidate for fraud more than one year after entry under the act of 1874 was herein never challenged, but always assumed. G. A. 7418 (T. D. 33115); United States *v.* F. Vitelli & Son (5 Ct. Cust. Appls., 151; T. D. 34194).

In 1909 Sherman & Sons Co. imported at New York certain laces upon which duties were liquidated during that year. In 1913 the collector reliquidated, *finding* fraud as a fact in the case. The importers declined to pay the additional duties and the Government brought suit in the United States District Court of that district. Demurrers were filed and sustained, solely upon the issue as to the allegations of fraud in the complaints, and on appeal to the United States Circuit Court of Appeals that court certified three questions to the Supreme Court. Neither by these questions nor otherwise in the case was the legal right of the collector to reliquidate for fraud one year after entry challenged. The questions certified inquired, could the collector *make a finding of fraud* after the one year, which, if not protested, would become *res adjudicata* as to the importers? Until the filing of the importers' brief in that case in the Supreme Court, December 14, 1914, this legal right, so far as we can discover, was never in any jurisdiction challenged, and is reported to have been

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exercised unchallenged, and section 21 of the act of June 22, 1874 (18 Stat. L., 186), been so interpreted ever since its enactment.

In Robertson *v.* Downing (127 U. S., 607), the Supreme Court accepted as controlling the interpretation of the Treasury Department of section 14 of this very act extending over a period from 1874 to 1882, eight years, wherefore, and in sound conviction, this court feels bound to accept such an interpretation of another section of the act (sec. 21) extending over a period of almost 40 years.

The court is convinced after thorough research that the power to reliquidate by a collector for fraud after the one year has frequently been exercised, and, before the briefs were presented in the case of Sherman & Sons Co., never questioned.

For these reasons we are clearly of the opinion that at the time of these reliquidations the collector of customs was fully empowered to reliquidate the entries in question more than one year after in the presence of fraud.

This brings us to consideration of what fraud is necessary to initiate action under section 21 of the act of June 22, 1874 (18 Stat. L., 186). The statute makes the previous liquidation final only "in the *absence* of fraud." To be unable to say that fraud is *absent* from a case, the test of the application of the statute is far different from the requirement of a "finding" of fraud.

The court is of the opinion upon the statutes and authorities that the statute is satisfied with and should be applied by collectors, and it is their duty so to do whenever there is a well-founded "*suspicion*" of fraud in the case; that where there is such a *suspicion* of fraud it can not be said there is an "*absence* of fraud." Locke *v.* United States (7 Cranch, 11 U. S., 339, 348); Clifton *v.* United States (4 How., 45 U. S., 242).

The court in proceeding to interpret this section is not unmindful that it is an exceptional statute, the interpretation of which class of laws is governed by exceptional rules. The exceptional rule was thus epitomized by the Supreme Court in United States *v.* Stowell (133 U. S., 1, 12):

> By the now settled doctrine of this court (notwithstanding the opposing dictum of Mr. Justice McLean in United States *v.* Sugar, 7 Pet., 453, 462, 463), statutes *to prevent frauds upon the revenue* are considered as enacted for the public good and *to suppress a public wrong*, and therefore, although they impose penalties or forfeitures, *not to be construed*, like penal laws generally, strictly *in favor of the defendant;* but they are to be fairly and reasonably *construed, so as to carry out the intention of the legislature.* Taylor *v.* United States (3 How., 197, 210); Cliquot's Champagne (3 Wall., 114, 145); United States *v.* Hodson (10 Wall., 395, 406); Smythe *v.* Fiske (23 Wall., 374, 380).

What degree of fraud in an import revenue case demands and justifies action in court upon part of customs officers has for more than a century been declared by Congress and the Supreme Court. The Republic was young when its experience in preventing fraud against

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its import revenues demonstrated the necessity of the act of March 2, 1799 (1 Stat. L., 627, 678, ch. 22, sec. 71). It was provided in section 71 of that act, which related to seizures for fraud upon the import customs revenues, "and in actions, suits or informations to be brought, where any seizure shall be made pursuant to this act, if the property be claimed by any person, in every such case the *onus probandi* shall lie upon such claimant, * * * but the *onus probandi* shall lie on the claimant only where *probable cause* is shown for such prosecution, to be judged by the court before whom the prosecution is had."

The wisdom and justice of that rule was demonstrated by 75 years' experience, when in essentially the same words it was made section 909 of the Revised Statutes; and again over a quarter of a century later approved and reenacted by Congress as section 21 of the customs administrative law of June 10, 1890 (26 Stat. L., 131), in force when these entries were made; again so reenacted as subsection 20 of section 28 of the act of August 5, 1909 (36 Stat. L., 11), in effect when these reliquidations were made, and subsection T of section 3 of the act of October 3, 1913 (38 Stat. L., 114), in effect when this trial was had. Said provision reads:

SEC. 21. That in all suits or informations brought, where any seizure has been made pursuant to any act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant: *Provided*, That probable cause is shown for such prosecution, to be judged of by the court.

The act of 1799, and particularly the import of the words "probable cause," as therein used, were interpreted by the Supreme Court, Chief Justice Marshall delivering the opinion for the court, in Locke *v.* United States (7 Cranch, 11 U. S., 339, 348), as follows:

These combined circumstances furnish, in the opinion of the court, *just cause to suspect* that the goods, wares, and merchandise against which the information in this case was filed have incurred the penalties of the law.

But the counsel for the claimant contends that this is not enough to justify the court in requiring exculpatory evidence from his client. Guilt, he says, must be proved *before the presumption of innocence can be removed*. The court does not so understand the act of Congress. The words of the seventy-first section of the collection law, which apply to the case, are these: "And in actions, suits, or informations to be brought, where any seizure shall be made purusant to this act, if the property be claimed by any person, in every such case, the *onus probandi* shall be upon such claimant." "But the *onus probandi* shall be on the claimant only where *probable cause* is shown for such prosecution, to be judged by the court before whom the prosecution is had."

It is contended that probable cause means prima facie evidence, or, in other words, such evidence as in the absence of exculpatory proof would justify condemnation. This argument has been very satisfactorily answered on the part of the United States by the observation that *this would render the provision totally inoperative*. It may be added that the term "probable cause," according to its usual acceptation, means less than evidence which would justify condemnation; and in all cases of seizure has a fixed and real well-known meaning. It imports a seizure made under *circumstances*

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which warrant suspicion. In this, its legal sense, the court must understand the term to have been used by Congress.

Of the numerous cases applying this rule those precisely applicable may well be cited. In Clifton *v.* United States (4 How., 45 U. S., 242) the Government in establishing probable cause chiefly relied upon a 10 per cent difference between the invoice and appraised value of the goods, and the failure of the claimant to produce papers known to be in his possession which might explain suspicions excited by uncommon circumstances of the case. The Supreme Court approved this instruction, holding that such made out such a prima facie case, and that the burden of proof rested upon the claimant. *The Luminary* (8 Wheat., 21 U. S. 407); Taylor *v.* United States (3 How., 44 U. S., 197, 211). The court, however, is not driven to construction as to what constitutes that fraud which should move customs officers wherever made the basis of action. Congress has declared such in an exactly parallel case. "The provisions in one of several acts forming a general system may be explanatory of other parts of the same system." *The Amelia* (1 Cranch., 5 U. S., 1, 35). By section 7 of the customs administrative act of 1890 it is—

Provided, That *if the appraised value* of any merchandise *shall exceed the value declared* in the entry by more than fifty per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure *the undervaluation*, as shown by the appraisal, *shall be presumptive evidence of fraud*, and *the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence.*

That principle was continued and approved by Congress in subsection 7 of the act of August 5, 1909, and subsection I of section 3 of the act of October 3, 1913. If a "suspicion" of fraud constitutes "probable cause" sufficient to shift the burden of proof upon the importer in seizure and condemnation cases under sections 7 and 9 and 20–21 of the customs administrative law as is therein provided, wherein the judgment is *forfeiture* of the goods, why should not that measure of fraud be sufficient to prompt reliquidation where judgment at most is for the additional duties? Congress and the Supreme Court having declared a difference in values sufficient evidence of fraud to warrant seizure and put the importer upon his proof, this court is of the opinion that a suspicious and persistent difference between the actual and invoice and between invoice and sale weights of a particular importer should be held equally sufficient to move customs officials to appropriate action, which in these cases was to reliquidation of the entries.

Common sense and all human probabilities support the wisdom and fairness of these exceptional rules. Fraud never courts publicity.

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The proofs of its existence usually lie wholly and secretly with the *particeps criminis*. If, therefore, statutes "intended to prevent fraud" are to "be so construed as to carry out the intention of the legislature in passing them" to "*most effectually* accomplish these objects" the courts should not surround the performance of these duties by public officials charged therewith under the law with impracticable and ordinarily impossible performances. Such is the justification of the rules stated.

Having indicated the conclusion that a "suspicion" of evidence would justify and demand action upon the part of the collector further discussion of the rule and the particular evidence herein will be more appropriately had in the consideration of the weight of this evidence before the Board of General Appraisers, whose decision is more immediately under review.

Bearing in mind the law of the case as concluded let us examine the records before us. The court is of the opinion that much confusion has ensued from an inaccurate estimation of the exact import of the decision of the collector. Great stress has been laid upon the collector's "findings" of fraud and his "decision" as to fraud. *Let it be definitely understood at the outset that the collector herein neither made nor attempted to make either a "finding of fraud" nor a "decision" that there was fraud.* In this case, as in all such, the sole and only legal function of the collector is to decide as to the *rate* and *amount* of the accrued duties, and in this case the *only thing* decided or found by the collector on reliquidation was that the amount of the duties previously liquidated was erroneous, and that a different and greater declared amount of duties was due. That much was decided. That much the law empowered him to decide. Beyond that he neither *decided* nor found nor stated he decided or found anything further. All else herein is referable to the legal requirements imposed upon the collector by the customs regulations of the Treasury Department.

The law declares what shall be so transmitted and included in the record before the board. Subsection 14 of section 28 of the act of August 5, 1909 (36 Stat. L., 11), provides: "Upon such notice" (protest) "and payment the collector shall transmit the invoice and *all the papers* and exhibits connected therewith to the board of nine general appraisers for due assignment and determination * * *." Pertinent thereto are the regulations, articles 1073 and 1074, *supra*. Thereupon, the proceedings, *supra*, were had, eventually bringing all the parties to retrial before the board upon order of this court on the importers' motion to grant an opportunity to offer evidence in rebuttal of the evidence in the record.

As the decision was made in 1912, he was governed by the Customs Regulations of 1908. These regulations in part provide:

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ART. 1073. *Transmission to Board of General Appraisers.*—Unless the claim set fo in the protest is regarded by the collector, after reviewing his action with regar the entry, as a valid one, he shall, within 30 days thereafter, transmit the prot invoice, *and all the papers and exhibits connected* therewith to the Board of Uni States General Appraisers, at 641 Washington Street, New York. * * *

ART. 1074. *Same—Statement of reasons for classification.*—The collector, or offi acting as such, in his letter of transmittal shall state *the reason which governed him the assessment of duty and shall forward any special reports received by him and other information in his possession relevant to the matter.* * * *

Whether we consider the report of the special deputy or the c lector all said in each is no more than a recital of the "reason actuating the reliquidation as to the amount of additional duties required by the regulations. What is *decided* or "declared" therein stated relates solely to the proper *amount* of duties up protest *and payment of the additional duties.* In obedience to t law and regulations, the collector transmitted all the legally requir papers to the Board of General Appraisers.

The material features (in suit 1464) shown by that record were:

(1) The decision of the collector as to the amount of duties proper due, estimated, and assessed upon the imported merchandise. Th amount was determined to be $1,037.31 more than and addition to the amount previously assessed.

(2) The evidence negativing the absence of fraud which prompt reliquidation by the collector. This consisted in part of an amend weigher's return vacating the previous weigher's report and returni the stated true weights. The evidence further consisted of "invoice and "accounts" including and in addition to the foregoing gather by the collector and by him certified to the board under the powe conferred upon him by section 16 of the customs administrative la (26 Stat. L., 131), and articles 1073 and 1074 of the Customs Reg lations of 1908, then in force. These "invoices" and "accounts when compared show that "these amended returns and the reliqu dation thereon relate only to garlic and chestnuts, while some of th entries, 14 in number, cover in addition other merchandise. Upo these corrected weigher's returns are written statements to the effe that the greater part of the reliquidated merchandise had been trace from the importers to various persons who had weighed the sam and kept a record of such weights, with which the weights shown i the corrected returns substantially correspond; that in some instanc the merchandise had been paid for upon the basis of such weight and that in at least one case the importers had billed the goods a 46,253 pounds, which was some 3,500 pounds greater than the weigh thereof as originally returned by the weigher. We have examine some of the files relating to all these 14 entries, and therefrom i appears that the corrected returns increase the weights above thos originally returned in amounts varying from 1,000 to 16,000 pound in each of such entries."

In addition to the foregoing the record before the board contained the collector's reported "*reason* which governed him in the assessment of duty," to wit: That "evidence was produced to show that the returns of the United States weighers were false and fraudulent, hence * * * reliquidations made on the true weights," accompanied by the "special reports received by him" from the weigher to the same effect, all as required by article 1074 of the Customs Regulations of 1908 to be transmitted by the collector to the Board of General Appraisers.

(3) The protest among other things directed (1) "against the payment of the said increase of duty," (2) alleged "that the said reliquidations are inaccurate and are based upon unreliable figures and data, and that the reliquidations, as originally made upon the abovenamed entries" were final and conclusive, (3) "that the importers deny that there was any fraud connected therewith."

At the second hearing before the board upon the foregoing record, the case having been ordered for new trial on importers' motion to introduce evidence, the importers' counsel announced—

> I had intended to go into the testimony and offer evidence and proof of the weights, etc. I have now decided not to do that and am simply going to make offers on the record, then make some objections on the record, and submit on that.

He then offered three indictments and records of acquittal in the case of United States *v. Joseph* Vitelli, this being a proceeding between the United States and *F.* Vitelli *& Son.* The board on objection of the Government excluded this evidence. Counsel for the importers then made the objections, as hereinbefore set out, principally in effect urging that the burden of proof was upon the Government to prove fraud; and that the weigher's returns upon which reliquidation was had were not made by the collector or any of his deputies. Both sides rested. The judgment was for the Government.

Was the board justified in excluding the certified copies of the indictments and records of acquittal offered as making a case of *res adjudicata?*

The first and elemental requirement of that doctrine is, "there must be identity, not only of the parties, in the two actions, but also as to the character, capacity or quality in which they are litigants." United States *v.* California & Oregon Land Co. (192 U. S., 355); Washington, Alexandria, & Georgetown Steam-Packet Co. *v.* Sickles *et al.* (24 How., 65 U. S., 333); Gaines *v.* Hennen (24 How., 65 U. S., 553); Reynolds *v.* Stockton (140 U. S., 254); Werlein *v.* New Orleans (177 U. S., 390).

There was no such mutuality of character or capacity. The protestants were *F. Vitelli & Son v.* United States. The records offered were in the case of United States *v. Joseph Vitelli.* Even were it competent, no proof of their identity was offered or suggested. Upon

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principle mutuality of causes of action may well be questioned where, as here, the Government in the criminal case was required to prove its case beyond a reasonable doubt, while in the civil proceeding it would prevail upon proof by a preponderance of the testimony.

Were these requirements present, however, that such a judgment was *res adjudicata* may well be doubted. Those acquittals at most no more than established the absence of fraud *on the part of the importers*. Whatever may be the powers of the collector in obviously exceptional cases of fraud, they are nowhere here limited to cases of fraud upon the part of the importers alone, and, for want of that limitation, extend to all cases of *the absence of fraud in the particular case* whether by the importers or others, whereby the Government is deprived of its just revenues. The statute is not one of criminal or punitive limitation but one upon the powers of the Government to collect revenues fraudulently withheld by whomsoever perpetrated. So it has uniformly been regarded by the courts. "There is no allegation that there was any fraud *in the case*." Beard *v.* Porter (124 U. S., 437, 442).

The fraud in question is that mentioned in section 21 of the act of June 22, 1874 (18 Stat. L., 186). The language there employed concludes the question. It is—

> After the expiration of one year from the time of entry, *in the absence of* fraud and *in the absence of* protest *by the owner, importer, agent, or consignee.*

Repetition of the words "in the absence of " can only be justified and given effect by a congressional purpose to separate the two provisions and their respective modifications. The only useful purpose in that particular was to confine all the modifications (by the owner, importer, agent, or consignee) to the latter and withhold them from the former predication. The confinement of the protest to that of an "owner, importer, agent, or consignee," without so limiting "fraud" indicates a congressional purpose not to so limit "fraud." Stephens *v.* Cherokee Nation (174 U. S., 445). Section 9 of the customs administrative act declares forfeiture of goods for acts of the owner, consignee, and "other persons." The Supreme Court has held a weigher one of such persons. United States *v.* Mescall (215 U. S., 26). That in certain cases "good faith and innocence constitute no defense" and that "the absence of any fraudulent intent by the consignee, the owner, or the agent" in certain actions to recover additional duties was held and the authorities reviewed by the Circuit Court of Appeals for the Eighth Circuit in United States *v.* Bishop (125 Fed., 181).

The rule of decision in United States *v.* Stowell (133 U. S., 1, 12) that statutes aimed at the prevention of frauds against the revenues will not be construed strictly in favor of the defendants, but to carry

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out the intent of the legislature was obviously followed in the case of United States *v.* Mescall (215 U. S., 26), where the rule of *ejusdem generis* was rejected and the patent intent of Congress followed. The unquestionable intent of Congress by this section (21) was to enable the collector to recover the just revenues whenever and by whomsoever defrauded of them. The statute in language is not confined to frauds by weighers or exporters or any particular person. That language is expressly avoided by the context. If we are to follow the rule and construe the act so as to enable the Government to most effectually recover the revenues of which it is defrauded we must grant that relief regardless of who commits the fraud, for it is that construction which most effectually observes the congressional purpose. The indictments and records of acquittal were properly excluded by the board.

It is argued, however, that the weigher's original return is final and conclusive upon and can not be varied by the collector, wherefore these reliquidations are void.

Appellants rely upon Marriott *v.* Brune *et al.* (9 How., 50 U. S., 619, 634) and Earnshaw *v.* Cadwalader (145 U. S., 247, 259) in support of this claim. Nevertheless, those cases perfectly harmonize with a long line of decisions of the Supreme Court typified by Belcher *et al. v.* Linn (24 How., 65 U. S., 508, 522), wherein it is held that even in cases of officers invested by law with the exercise of powers involving judgment and discretion, such as appraisers, "power in the officer and fraud in the party" is always open to challenge as effecting finality of their actions. Announcement of the principle seems but the statement of a trite legal maxim.

Intimately associated at this point of discussion are the suggested restraints to reliquidation offered by the previous liquidation, the appraisement, and the weigher's original return.

For reasons hereinafter indicated there is no question of the appraisement or its validity in this case, and the references and authorities so relating are used by way of illustrating the principle herein adopted. The power of the collector to reliquidate we have already considered. The theory of the manner of its effect upon the original liquidation in the presence of that power becomes of less importance.

Whether upon the principle that a liquidation induced by fraud is a nullity, absolutely void, and, therefore, that the reliquidation is such in name only, but not such in law or fact, being the only valid liquidation in the case; or, upon the principle that the reliquidation is an abandonment of the original, the legal right so to do finds ample and unchallenged support in the authorities.

Even in cases of appraisement, which are and ever were by statute declared final as against the Government as well as the importers,

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the Supreme Court in cases where an appraisement was induced by fraud, has affirmed the power of the collector to treat it as a nullity and order a new appraisement. In Iasigi *et al.* *v.* Collector (1 Wall., 68 U. S., 375, 383), the court said:

It is true, that the appraisal and ascertainment of the dutiable value of the goods are made final and conclusive both upon the importer and the Government. But the question still remains, *what* appraisement or ascertainment of the value is to be regarded as final? It is admitted, if the appraisal was infected with fraud or imposition, it could not be, and the collector would not only be justified, but it would be his duty to order reappraisement, even under the circumstances in which the present one was made.

The interests of the Government, as well as a proper regard for the rights of the honest importer, require it. And it seems to us but reasonable, if, from neglect or want of proper evidence or information on the part of the appraisers, the appraisal be under the proper dutiable value, this power of the collector should be permitted to correct the error. It is true, the exercise of it is usually, and doubtless with few exceptions, previous to the permit to deliver the goods; and must be so, generally, in order to be effective. But the act of Congress conferring the power on the collector fixes no limit to the period within which it may be exercised, and we think a reasonable discretion should be allowed him.

In Robertson *v.* Downing (127 U. S., 607, 613), affirming the power of the collector to reliquidate, the court observed:

The previous liquidation * * * was necessarily abandoned by the corrections subsequently made.

In Louisville Pillow Co. *v.* United States (144 Fed., 386), the Circuit Court of Appeals for the Sixth Circuit thus declared the legal status:

As we read the statutes, the reliquidation has all the validity of the original liquidation. *When made, it becomes the liquidation in lieu of the original, and must be treated as such under section 14.* As said in Robertson *v.* Downing (127 U. S., 607, 8 Sup. Ct., 1328, 32 L. Ed., 269), where the duties were first liquidated on May 5, 1882, and reliquidated on May 24, 1882, and the protest was not filed until two days after the reliquidation (p. 613 of 127 U. S. and p. 1331 of 8 Sup. Ct., 32 L. Ed., 269): "The duties were not finally liquidated until the 24th of May, 1882. The time to protest did not begin to run until then. The previous liquidation on the 5th of May was necessarily abandoned by the correction subsequently made." Followed in Sgobel & Day *v.* Robertson (C. C., 126 Fed., 577).

In the recent case of United States *v.* Whitridge (197 U. S., 135, 25 Sup. Ct., 406, 49 L. Ed., 696), in which was involved the rupee price of imported goods, the collector first liquidated, then reliquidated upon the protest of the importers, and again reliquidated under direction of the Secretary of the Treasury. After the second reliquidation the importers protested, and the matter was submitted to the Board of General Appraisers, whence it ultimately reached the Supreme Court.

To the same effect see United States *v.* McDowell (21 Fed., 562); United States *v.* Dickson (C. C. A., 139 Fed., 251); Sgobel & Day (126 Fed., 577); *In re* Strauss, Sachs & Co., G. A. 2743 (T. D. 15309); *In re* Hartmann & Darling, G. A. 3610 (T. D. 17436); *In re* Ford, G. A. 3167 (T. D. 16338); *In re* Comey & Johnson, G. A. 3842 (T. D. 17967); *In re* Stone & Co., G. A. 5406 (T. D. 24623).

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That by reason of the presence of fraud herein the collector was not bound either by the weigher's return or the previous liquidations seems amply supported upon principle and authority.

Regardless of the validity of the weigher's amended return as such there would seem to be no question of his power to declare void as he herein did the previous returns. Section 249, Revised Statutes, provides "the Secretary of the Treasury shall *direct* the superintendence of the collection of the duties on imports and tonnage, *as he shall judge best.*" Section 251, Revised Statutes, empowers him to make regulations having the force of law (cases *supra*). By article 1484 of the Customs Regulations of 1908 the weigher is empowered to amend his returns of weights. Whatever may be said of the manner of that amendment as otherwise required by the regulations, the power to amend implies a power to vacate the previous return, which was herein expressly done. That the collector has power so to treat an original liquidation we have already considered.

That the existence of fraud rendered both the weigher's return and original liquidation void is well settled upon principle.

In an opinion of much learning by Mr. Justice Story, sitting as Circuit Justice in Bottomley *v.* United States (1 Story, 135; 3 Fed. Cas., 968, No. 1, 688), where a permit of lading was obtained by false and fraudulent invoices and bribery of a deputy collector, it is concluded:

> Here, no true entry, or honest estimate of duties, has ever been made; the duties justly due have never been paid, or secured to be paid. In each case, the transaction is equally a gross and palpable fraud; and the *more or less of aggravation in the circumstances can not change the legal result.* It makes no difference in the concoction of the fraud, in legal intendment, whether it defrauds the Government of the whole, or of the half, or of the quarter of the legitimate duties. It is still tainted and putrescent throughout. It is in known violation of law; and *no act, done in known violation of law, can be admitted to have any legal validity.* It would be a contradiction in terms. Upon the whole, I am entirely satisfied, upon full deliberation, that the permit in the present case, if obtained by fraud and collusion between the claimant and the deputy collector (as the jury have found it was), was utterly void, and a mere nullity, and never had any legal existence as a permit. The cases of Cutts *v.* United States (case No. 3, 522), United States *v.* Lyman (*Id.* 15647), and Johnson *v.* United States (*Id.* 7419), involved many considerations directly applicable to the present point; and I see no reason to be dissatisfied with those judgments.

In United States *v.* Nine Trunks (27 Fed. Cas., 161, No. 15885), the principle was laid down by Mr. Justice Strong, Circuit Justice, that an "illegal importation worked a forfeiture." On appeal to the Circuit Court the decision was affirmed. United States *v.* Nine Trunks (27 Fed. Cas., 164, No. 15886). To the same effect the *Sarah B. Harris* (21 Fed. Cas., 441, No. 12344).

Congress by section 9 of the customs administrative law (26 Stat. L., 131), in a paragraph speaking of "fraudulent *or false* invoices, entries and papers," has declared an importation so made an

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illegal importation. If the acts *in pari materia* are to be interpreted as therein provided, these importations were illegally introduced by "false" invoices and entries, and if such is deemed sufficient to warrant reliquidation in another instance, why not here?

Assuming that the collector has the power to reliquidate after the one year, and that a well-founded suspicion of fraud will support such action, as we have shown, this case is precisely within the principle of decision adopted by the Supreme Court in United States *v.* Tappan *et al.* (11 Wheat., 24 U. S., 420, 426), wherein the court said:

> In explanation, however, of this answer, it is proper to observe that the eleventh section of the act, to which the questions are pointed, is intended to clothe the collector with enlarged powers to guard against fraudulent invoices. Whenever, in his opinion, there shall be just grounds to suspect that the invoice does not truly state the actual cost of the goods, he may direct an appraisement. How, or by what means, that opinion is made up, no one has authority to inquire, or a right to control. Ordinarily it will be founded from his own knowledge or the information he gets from others of the market price of the goods, and if that should differ widely from the invoice prices, it will afford grounds for suspecting the invoice to be fraudulent. For, as a general course of business, it is to be presumed that goods are purchased at the common market price. The authority of the collector to direct an appraisement is regulated, however, entirely by his own suspicion that the invoice is untrue, and does not state the actual cost of the goods as required by law. Whether this suspicion be well founded or not, it is not matter of inquiry. So far as respects the authority of the collector to direct the appraisement, he is governed altogether by his own opinion of the grounds of suspicion. Whether these suspicions were well or ill founded, and the consequences resulting therefrom, will depend upon after inquiry before the appraisers, and their decision thereupon. But the collector can not be called upon to avow or show the grounds upon which his suspicion rests. The law has vested him with an uncontrolled discretion on this subject to be regulated and governed by his own opinion, of the sufficiency of the grounds on which he suspects the invoice to be below the true value or actual cost of the goods.

While it is true that the weigher's return is presumably correct under the presumption attending official action, and can not be varied by the collector (Earnshaw *v.* Cadwalader, 145 U. S., 247, 259), except when the weigher has failed to follow the law *or in cases of fraud* (Belcher *v.* Linn, 24 How., 65 U. S., 508, 522), Congress has not expressly invested it with the finality of appraisement which, by section 13 of the customs administrative act, in the absence of protest, is made final and conclusive against all parties, including the collector. No such finality is given by Congress to weighers' returns. Revised Statutes United States, 2890. The fact that Congress deemed it necessary by sections 13 and 14 of the customs administrative act (26 Stat. L., 131) and section 21 of the act of June 22, 1874 (18 Stat. L., 186), to so expressly legislate as to finality of the appraiser's and collector's acts, argues that it did not so intend to make *final* the weigher's report.

The most that can be said against these amended returns of the weigher is, that the time and manner of making such not having been

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pursued as prescribed by the Revised Statutes, sec. 2890) and Customs Regulations of 1908 (arts. 1036, 1440, and 1478–1512), they were *functus officio as such*. United States *v.* Leng (18 Fed., 15). We think the law otherwise. But the official weigher yet remained an officer of the customs and in making these special reports did so as such a public officer under the order and direction of the collector (art. 1440, *supra*) at the port of New York. Their evidentiary value as such "special reports" will later be discussed.

The likening the powers to those of appraisers in the briefs of appellants is unfortunate, for on the precise point the Supreme Court has held that they could base their judgment upon "computations *and reports*" made by witnesses. Origet *v.* Hedden (155 U. S., 228, 236).

That the collector is not left without power in such a status, and that the orderly collection of the vast import customs revenues of the country has not been made dependent by Congress upon the fidelity, integrity, and capacity of every subordinate official of the customs service, is here well exemplified. Congress has not been so impoverished of wisdom that after more than a century of experience and legislation in its customs revenue administration it has upon the first appearance of infidelity or inaccuracy of any subordinate ousted the collector of all power to collect the just dues.

Appellants thus voice their claim:

> Each of the entries and reliquidations which are *transmitted to this court as part of the record* contains a statement reading as follows: "The correct weight as returned herein is ascertained as follows:" Then comes a statement that "Core & Herbert," or "Visconti," or "Bernard," or "Gastenheimer, of Nash & Kendall," or some other person, naming him, weighed a certain number of baskets at a certain weight. None of the persons so named are United States weighers, or authorized or employed to act as such. * * *
>
> There is no doubt that if the United States weigher in this case had simply made his return of weights, without stating on the record how he arrived at them, it would be presumed that he acted according to law, in the absence of evidence to the contrary; but such presumption is overcome where *the return itself contains the evidence, showing that the weights were not ascertained in the manner prescribed by statute.*

It is significant that, commencing with the customs administrative act of 1890 (26 Stat. L., 131), section 13, long after the enactment of section 2890, Revised Statutes, *supra*, Congress immediately after legislating finality as to the appraiser's report, provided as to the remaining ascertainments necessary to liquidation, "*the collector* or the person acting as such shall *ascertain*, *fix*, and liquidate the rate *and amount* of the duties," etc. Certainly in case no weigher was provided by law, or where he could not perform his duties because of the absence of the goods or for other cause, this power is broad enough to authorize the collector to ascertain the weight in any satisfactory manner.

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This view is confirmed by section 16 of the customs administrative act (26 Stat. L., 131), giving collectors the power *unlimited in time* to cite the "owner, importer, agent, consignee, *or other person*," examine him under oath and "require the production of any letters, accounts, or invoices relating to said merchandise," "may require such testimony to be reduced to writing, and when so taken it shall be filed in the office of the collector and *preserved for use* or reference until the *final* decision *of the collector or said board of appraisers* * * * respecting the valuation *or classification* of said merchandise." In a decision of great merit by Judge Hand, Southern District of New York, it was held that the provision empowered the collector to "order an examination *in aid* of a possible reliquidation." United States *v.* Calhoun (184 Fed., 499, 506). That case was affirmed on appeal, United States *v.* Calhoun (C. C. A., 215 Fed., 709). Moreover, the statute makes and declares the testimony and accounts so taken by the collector legal evidence before the collector and the board, their weight to be determined, of course, by the reviewing tribunal. With this broad power granted the collector to examine, fix, and liquidate the amount of the duties, coupled with the absence of any provision making the weigher's return final, and the broad power of section 16 in the collector to examine and consider "accounts" of *all* persons, we entertain no doubt that at least in cases where the weigher did not follow the law or was guilty of fraud the collector could, as he did here, direct the weigher or proceed himself to "ascertain" from the "accounts" of merchants to whom the merchandise was sold its true weights, and accordingly liquidate.

Whether we consider this "evidence" of weights, spoken of by appellants, introduced in the record as an amended weigher's return, or as "accounts and invoices" taken by the collector under section 16 of the customs administrative act (26 Stat. L., 131), or as "special reports received by him and any other information in his possession relevant to the matter," transmitted to the board under article 1074, Customs Regulations of 1908, when before the collector it was evidence "in aid of reliquidation" and when so transmitted became a part of the record and evidence duly before the board.

There was no other proof offered, made, or taken before the board and the sole evidence in the case was that transmitted by the collector. Did the board err in its decision? We think not.

Viewing the record as supporting the collector's action, his reliquidation was within his legal powers (cases *supra*) and the court is of the opinion that there was sufficient evidence before him to warrant and require such action. Whether the decision of the collector be deemed such an official act as is attended by a presumption of verity and regularity, or that of an inferior tribunal or administrative

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officer acting in a quasi-judicial capacity whose jurisdiction will not be presumed, the "fraud" required by the act being a jurisdictional requisite, due degree of which must be shown by the record, this record satisfied both requirements.

(1) That the decision of collectors of customs as to the rate or amount of duty are presumed correct and regular is well established and not open to serious question.

The Supreme Court in Arthur *v.* Unkart (96 U. S., 118, 121, 122) precisely adjudged this question, declaring:

> When an appeal is taken from his decision, the decision of the collector ceases to be conclusive; and the same is true of the decision of the Secretary of the Treasury. These officers are, however, selected by law for the express purpose of deciding these questions; they are appointed and required to pronounce a judgment in each case; and the conduct, management, and operation of the revenue system seem to require that their decisions should carry with them the presumption of correctness. This rule is not only wise and prudent, but is in accordance with the general principle of law that an officer acting in the discharge of his duty upon the subject over which jurisdiction is given to him is presumed to have acted rightly.

This court so held in United States *v.* Vitelli & Son (5 Ct. Cust. Appls., 151; T. D. 34194); United States *v.* Frank & Lambert (2 Ct. Cust. Appls., 239; T. D. 31973); Wolff *v.* United States (1 Ct. Cust. Appls., 181; T. D. 31217); United States *v.* Bradshaw & Co. (5 Ct. Cust. Appls., 121; T. D. 34168). See also to the same effect United States *v.* Arredondo (6 Pet., 691, 729); Earnshaw *v.* United States (146 U. S., 60, 67); Erhardt *v.* Schroeder (155 U. S., 124); Muser *v.* Magone (155 U. S., 240, 251).

Indeed, it seems well established that not only does this presumption attend the decision of the collector but, when it is essential to act, that a certain state of facts should exist, there is a presumption of the existence of such facts. United States *v.* Loeb *et al.* (99 Fed., 723, 732); United States *v.* Rosenwald *et al.* (C. C. A., 67 Fed., 323, 328); United States *v.* Schering *et al.* (C. C. A., 123 Fed., 65, 67).

Assuming, however, that the collector's decision is not so attended with this presumption, the applicable rule is concisely stated in Galpin *v.* Page (18 Wall., 85 U. S., 350):

> As to them there is no presumption of law in favor of their jurisdiction; that must affirmatively appear by sufficient *evidence* or proper averment in the record, or their judgments will be deemed void on their face.

Equally concise is Sabariego *v.* Maverick (124 U. S., 261):

> If we had before us an actual and formal decree of a competent tribunal adjudging him guilty of the offense and confiscating his property in punishment therefor, that of itself would not be sufficient to establish its own validity. We should still require *record evidence* of the existence of those facts which brought him and his property within the jurisdiction of the tribunal pronouncing such a decree.

That the requirement is satisfied by *evidence* in the record of the requisite fact, be it jurisdictional or evidentiary, is well settled.

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United States *v.* Jonas (19 Wall., 86 U. S., 598); United States *v.* Ross (92 U. S., 281); United States *v.* Carr (132 U. S., 644).

This record as presented to and acted upon by the collector contained such evidence in the fullness required by the statute. By its least import it contains evidence of a persistent variance between the invoice and entered and the actual weights and between the former and the weights at which they were sold and settled for.

If this court observes the general principle declared by the Supreme Court in United States *v.* Stowell (133 U. S., 1, 12) that such statutes "shall be so construed as will most effectually prevent fraud" and the application of that rule by that court in Locke *v.* United States (7 Cranch, 11 U. S., 339), wherein a "suspicion" of fraud, and in Clifton *v.* United States (4 How., 45 U. S., 242), wherein a variance in values were held sufficient evidence of fraud to warrant action and put the importer upon his proofs in actions in the United States courts *to forfeit* the importer's goods (in which courts the general rule putting the burden of proof by a preponderance of the evidence upon the Government otherwise obtains), how can we refuse to hold a suspiciously persistent variance in weights of these importers' goods, coupled with the fact of their billing them on sale at much greater weights, sufficient evidence of fraud to warrant and require the collector to reassess the duties, whereupon, as we shall show, the importer, if the goods are in customs custody, receives notice and must pay the increased duties in order to protest and try his case before the board, with appeal to the courts. But if the goods are not in custody, upon receipt of the required notice he can either pay the increased duties, protest, and litigate as before, or refuse to pay and defend action in the United States District Court. Be it noticed in passing that if in the United States District Court a well-founded "suspicion" of fraud will, under the statutes, support action and shift the burden of disproving fraud to the importer, why would not that same "suspicion" of fraud warrant the therein reviewed action of the collector founding the action? Certainly no one will contend that less evidence is required to support the review of a decision uncontradicted than is necessary to support the decision itself! Wherefore, the court is of the opinion that the evidence before the collector was sufficient in due observance of his official duty to *require* action. What, may be asked, would any merchant do upon discovery that goods delivered to him were thus persistently materially underweighed as paid for? Would he be justified in suspecting fraud?

Upon protest and appeal to and the case being called by the board, all parties being present, determination of the issues proceeded. All evidence offered (the indictments and records of acquittal) were excluded, and the case submitted upon the record before the collector, as detailed. What then was the legal status of the case as submitted to the Board of General Appraisers?

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(*a*) *The record showed a reliquidation by a collector of customs as to the amount of duties due upon imported merchandise.* The presumption of correctness attended that decision of the collector (cases *supra*). If any presumption of innocence aided the importers, that was neutralized by the former presumption and the parties stood before the board unaided by presumptions, the burden of proving the allegations of the protest resting upon the importers.

(*b*) *The record contained evidence that negatived the absence of fraud.* The evidence of persistent variances in and sales at greater weights, being evidence of fraud, destroyed any presumption of innocence attending the importers. As said by the Supreme Court in Galpin *v.* Page (18 Wall., 85 U. S., 350, 366):

> Presumptions are only indulged to supply the absence of evidence or averments respecting the facts presumed. They have no place for consideration when the evidence is disclosed or the averment is made. When, therefore, the record states the evidence or makes an averment with reference to a jurisdictional fact, it will be understood to speak the truth on that point, and it will not be presumed that there was other or different evidence respecting the fact, or that the fact was otherwise than as averred.

In the presence of evidence that there was fraud no presumption that there was not such and that the importers were innocent will be indulged. On the contrary, this evidence being undisputed by other evidence or explained by the importer it was sufficient to establish a *prima facie* case for the Government. Locke *v.* United States (7 Cranch, 11 U. S., 339); Clifton *v.* United States (4 How., 45 U. S., 242). Moreover, the importers being present, not only must we presume that they knew the true weights upon which they purchased and sold the goods, but having declared in their protest that the reliquidated weights were "inaccurate and are based upon unreliable figures," their failure to so prove in explanation of the persistent variances and sales shown by the record the board was bound to take into consideration against them. Locke *v.* United States (7 Cranch, 11 U. S., 339); Clifton *v.* United States (4 How., 45 U. S., 242), and cases *supra*. The evidence in the case, *irrespective of any presumptions*, put the burden of proof upon the importers, and having failed to explain the variances the board was bound to render judgment for the Government. Locke *v.* United States (7 Cranch, 11 U. S., 339); Wood *v.* United States (16 Pet., 41 U. S., 342); *The Luminary* (8 Wheat., 21 U. S., 407); Clifton *v.* United States (4 How., 45 U. S., 242).

The board had a right and no doubt did take into consideration that these importers had come to this court asking for a modification of a previous decision and for an order permitting them to offer proof below; that in their protest, eliminating the question of fraud, they alleged the reliquidating weights erroneous, that in the ordinary course of business they knew and could prove the true weights,

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thereby concluding the cause in their favor, yet they failed so to do. (Cases *supra.*)

The two matters appearing from the record as transmitted by the collector, (1) that a collector of customs had reliquidated an entry deciding the amount of duty due, and (2) the reliquidation being more than one year after entry, the existence in the record of evidence sufficient to establish probable cause (or well-founded suspicion in the mind of the collector) that fraud was not absent from the case, the Board of General Appraisers had jurisdiction to hear and determine the issues, both as to the amount of the duties and the existence of fraud in the case, and the evidence of fraud in the record was sufficient to shift the burden of proof upon the importers to explain or contradict that evidence.

This we regard the legal status of the case upon judgment by the board, whether or not, *in such a case*, the long and well established rule in customs and all cases here obtained that the burden of proof is upon the protestant to prove the material allegations of his protest, aptly stated by the Supreme Court in Arthur *v.* Unkart (96 U. S., 118, 122):

> Both the sheriff and collector have power to act in the first instance upon the question in dispute, and he who insists that such action is in violation of law *must make the proof to show it.*

United States *v.* Arredondo (6 Pet., 31 U. S., 691, 729); Louisiana *v.* McAdoo (234 U. S., 627); Arnson *v.* Murphy (115 U. S., 579). And the rule has been held to apply to allegations or requirements of a complaint for fraud. Doll *v.* Evans (7 Fed. Cas., 855, No. 3969); Murray's Lessee *et al. v.* Hoboken Land and Improvement Co. (18 How., 59 U. S., 272); Public Clearing House *v.* Coyne (194 U. S., 497); Butterfield *v.* Stranahan (192 U. S., 470).

There is nothing conflicting with the conclusions herein in United States *v.* Federal Sugar Refining Co. (221 Fed., 1016). In that case the complaint counted upon the *finality of a finding* or decision of the collector that there was fraud in the case. The statute, as we have seen, nowhere makes such a *finding* final or conclusive. It follows that such, if made, could not become *res adjudicata* as to fraud. The whole view of Judge Coxe is in entire harmony with the views herein expressed. This is shown wherein he concludes:

> If the allegations stated in paragraph ninth of the complaint were stated not as "findings and decisions," but as *facts*, the defendant, by denying them, would have its day in court and an opportunity to prove that there was no fraud.

It follows such a complaint would have been deemed good.

For the same reason what is *decided* in United States *v.* Sherman & Sons Co. (237 U. S., 146) in no way conflicts with what is here decided. In that case there were two complaints. One made no allegation of either facts or a finding claimed conclusive by the col-

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lector and one made the latter allegation. The court held, with Judge Coxe, that both complaints were bad, and that each should have alleged fraud *as a fact in the case.*

While those cases arose on demurrer to the sufficiency of complaints unattended by any presumptions of correctness this case arose on appeal from a decision not only so attended but wherein the judgment roll shows all the facts and evidence before the collector which have been held necessary to a good complaint before the courts.

Much has been said about possible arbitrary action of the collector, want of notice to the importers, and an opportunity to disprove the fraud supporting the reliquidation where the procedure of the customs administrative act is pursued. Courts should give little heed to arguments based upon the assumption of malfeasance upon the part of sworn public officers. If courts observe the familiar rules of construction such *speculation* will find no legal justification in presence of the presumption of regularity of performance of public duties by such officers.

So, reasoning that the customs administrative procedure affords no notice of reliquidation or opportunity to disprove fraud prompting such, shows a signal oversight of the law. Our customs administrative laws are in no respect vulnerable to such charges of *ipse dixit* action or the deprivation of property without notice or opportunity of defense. Congress, in the early history of the country, realized that such a system could better, probably only, be made complete in detail, effectiveness, and fairness by confiding to the experience of the Treasury Department the power to supplement these laws by detail regulations with the force of laws.

This power was granted by act of February 10, 1820 (3 Stat. L., 543), and as revised finally incorporated as section 251, Revised Statutes. These regulations, when not contrary to the statutes and reasonable, have the force of law. United States *v.* Eaton (144 U. S., 677); Gratiot *v.* United States (4 How., 45 U. S., 80); *Ex parte* Reed (100 U. S., 13); United States *v.* Symonds (120 U. S., 46). When there has been a long acquiescence in such a regulation its construction of a statute will not be disregarded without the most cogent, persuasive reason. Robertson *v.* Downing (127 U. S., 607); Brown *v.* United States (113 U. S., 568, 571); United States *v.* Philbrick (120 U. S., 52, 59).

Contrary to the claimed want of express notice and opportunity to defend given importers by collectors of customs of reliquidation such has been required by the customs regulations for the last quarter of a century. The Supreme Court, in Westray *v.* United States (18 Wall., 85 U. S., 322), held importers not entitled to such notice. By circular of May 10, 1867, the Treasury Department required collectors

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to give such notice by posting in the customhouse. That rule was made article 359 of the Customs Regulations of 1884. The Customs Regulations of 1892 (art. 888) and of 1899 (art. 1477) required "a daily record must also be kept by both the collector and the naval officer *of all additional duties* found upon liquidation, and notice thereof *promptly sent* to the parties in interest." The Customs Regulations of 1908 (art. 1037) extended the requirement to "all duties, *additional and regular*."

That such notice was given in these cases, see record, page 6. The same appears from the opinions of the courts in United States *v.* Sherman & Sons Co. (237 U. S., 146, at p. 147), and in United States *v.* Federal Sugar Refining Co. (211 Fed., 1016, at p. 1017). The claim, therefore, that reliquidation by a collector more than one year after entry for fraud under the customs administrative procedure leaves the importer without opportunity to defend against or disprove fraud is without foundation. This record completely disproves that claim.

The principles herein expressed demonstrate the complete harmony between what is decided in the cases discussed. Some pertinent comment may prevent misconception.

It should be borne in mind that in these cases, upon notice of reliquidation, the importers paid the additional duties (record, p. 6) and protested, thereby bringing themselves within the jurisdiction of the Board of General Appraisers and this court, whereas in both the cases of Sherman & Sons Co. and the Federal Sugar Refining Co. upon such notice the importers refused to pay the additional duties assessed upon reliquidation. This fact alone determined the tribunal of future proceedings.

Another pertinent difference is that these reliquidations did not affect or change the appraisements made. The appraiser fixed the unit value of the goods, which the collector followed, the reliquidation being based upon the weights of the merchandise. Herein, then, the line of cases denying the power of the collector to reliquidate upon the ground of finality of the appraisement are not in point. Due observance of this important distinction will avoid confusion. Of such cases are Beard *v.* Porter (124 U. S., 437); United States *v.* Calhoun (184 Fed., 499; affirmed C. C. A., 215 Fed. Rep., 709); *In re* Blum Hardware Co., G. A. 7636 (T. D. 34917). The difference in the statutes declaring appraisements final—section 13, customs administrative act of 1890, as amended 1909 (36 Stat. L., 11)—expressly concluding all interested "parties" from that of decision of the collector extending only to "persons" (sec. 14, *ibid.*) is well settled. The former includes the collector, the latter does not. United States *v.* Phelps *et al.* (17 Blatch., 312; 27 Fed. Cas., 521, No. 16039); United States *v.* Leng (18 Fed., 15). Whether or not, however, an

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appraisement moved by fraud possesses such finality or is a nullity is not in this case and not decided. See, however, Isaigi *et al.* *v.* Collector (1 Wall., 68 U. S., 375, 383); Hilton *et al.* *v.* Merritt (110 U. S., 97, 106); Passavant *v.* United States (148 U. S., 214, 220); Beard *v.* Porter (124 U. S., 437, 442); Belcher *v.* Linn (24 How., 65 U. S., 508, 522).

Careful reading of Federal Sugar Refining Co., Sherman & Sons Co., and Vitelli & Son, decided by this court on the first appeal, shows no conflict in what was decided. On the contrary, the latter appeal in all its phases demonstrates the claimed injustice of such procedure without foundation. In the first two cases it was held that the collector could not make a *finding* or decision of fraud which under the statute would become *res adjudicata*. We so held in effect in Vitelli & Son, the sole point decided being that the presumption of correctness of the decision of the collector and the evidence of fraud in the record each was sufficient to put the burden of proof upon the importer. That holding necessarily denied the conclusiveness of any such finding.

It should be particularly noted that it was not a *finding* of *fraud* by the collector that this court held would become *res adjudicata* under section 21 of the act of June 22, 1874 (18 Stat. L., 186), but the decision of the collector *as to the rate and amount of duty*. The finding or existence of fraud necessary to move reliquidation after the one year was not held the subject of *res adjudicata*, but disputable. That is settled by the statute (sec. 14 of the customs administrative act, 26 Stat. L., 131), which makes "the decision of the collector as to the *rate and amount of duties*, * * * all dutiable *costs and charges*, and * * * all fees and exactions * * * final and conclusive," and not his findings or evidence. The very fact that the statute does not require the collector to make a finding or decision as to fraud argues the requirement of such to support action to be of less fraud than would support a finding or decision. The statute, however, does make the collector's decision as to the *amount* of duty final in the absence of protest. Unprotested this decision becomes *res adjudicata* in all proceedings and in all courts. The importer may, however, elect remedies. He may protest and contest, if within a year after entry the *amount* of duty, if after the year the existence of fraud. The importer may elect tribunals, pay his duties, and protest as in this case, or refuse to pay his duties and defend in the District Court. If it duly appears on trial before either tribunal that there was an "absence of fraud" the decision as to the amount of duty is barred by section 21 of the act of June 22, 1874 (18 Stat. L., 186). If it appears that there was not "absence of fraud" the decision of the collector as to the amount of duty is not *res adjudicata*. That the decision of the collector as to the *amount* of duty duly made as dis-

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tinguished from his findings becomes *res adjudicata* is not only clear from the words of the act, but has been repeatedly affirmed by the courts, and that uniform interpretation has been adopted by Congress by repeated reenactments of the statute. That has been the repeated ruling of the courts for more than 40 years, including the Supreme Court in Westray *v.* United States (18 Wall., 85 U. S., 322, 329); United States *v.* Cousinery (7 Ben., 251; 25 Fed. Cas., 677, No. 14878); Watt *v.* United States (15 Blatch., 29; 29 Fed. Cas., 441, No. 17292); United States *v.* Phelps *et al.* (17 Blatch., 312; 27 Fed. Cas., 521, No. 16039); United States *v.* Campbell (10 Fed., 816, 819); United States *v.* Cobb *et al.* (11 Fed., 76); Gandolfi *v.* United States (74 Fed., 549); United States *v.* Tiffany & Co. (151 Fed., 473); United States *v.* Mexican International R. Co. (151 Fed., 545). See also Arnson *et al. v.* Murphy (115 U. S., 579, 584). Of course, that finality of decision only applies where the goods were entered and appraised and decision duly made—at least prior to the act of October 3, 1913 (38 Stat. L., 114), subsection N of section 3, which extends that finality to decisions of the collector to all "duties chargeable upon imported merchandise." Nor does the doctrine conflict with the line of cases wherein suit is brought to collect duties upon goods smuggled or otherwise not entered so as to come within jurisdiction of the collector, such as in *In re* Chichester (48 Fed., 281); *In re* Floyd Bros. & Co., G. A. 6468 (T. D. 27680). There is always open in such cases the right of the collector to seize the goods to await decision of the courts in proceedings to libel the goods, or in an action *in personam* against the importer unattended by any existing decision of the collector *res adjudicata*. The finality, therefore, of the collector's decision is neither anomalous nor in conflict with the adjudicated cases. These respective jurisdictions are supplemental one with the other.

The collector, barring exceptional minor instances, such as unclaimed goods (Revised Statutes, 2965), or seized goods valued at less than $500 (Revised Statutes, 3077), or perishable articles (Revised Statutes, 3080), has no power of executing his decisions. Enforcement thereof rests in his power to prevent landing and delivery until duties are paid or secured (Revised Statutes, 2869), at least prior to the act of October 3, 1913 (30 Stat. L., 114). When entered and the estimated duties paid or secured, jurisdiction of the collector attaches and the procedure prescribed by the customs administrative act becomes exclusive, final, and conclusive as to the "rate and amount" of duties, all "dutiable costs and charges," and all "fees and exactions." Nichols *v.* United States (7 Wall., 74 U. S., 122, 129, 131); Andreae *v.* Redfield (98 U. S., 225); Arnson *et al. v.* Murphy (109 U. S., 238); Porter *v.* Beard (124 U. S., 429); Schoenfeld *v.* Hendricks (152 U. S., 691).

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If, however, the importer refused to enter his goods (duties having accrued when the ship passed into the customs district); or if they were smuggled; or if he had given bond for payment of duties and it was necessary to enforce the bond; or if they were seized by the collector under sections 13 and 14 of the act of June 22, 1874 (18 Stat. L., 186), or other laws; in all such cases or in cases of reliquidation where the importer does not pay the additional duties decree of a competent court is necessary to *collect* the duties. If there had been a valid decision of the collector as to the rate or amount of duties, that in all such cases, and nothing more, is made *res adjudicata*. Beyond that in such cases all done or assumed by the collector in making his decision is open to contest, subject to the duly attending presumptions. In view of these distinct and defined powers and duties of the respective tribunals, the court upon careful comparison of the records and decisions finds no conflict in what was decided in the Federal Sugar Refining Co. case, in Sherman & Sons Co., and the previous and this Vitelli & Son decision by this court. In that and the view that the evidence in the record was sufficient to put the importers herein upon their proofs, the decision of the Board of General Appraisers should be affirmed.

In any event, were this court to regard the decision of the Supreme Court in United States *v.* Sherman & Sons Co., *supra*, as applicable to this case, these appellants having by protest to the Board of General Appraisers invoked relief in a tribunal without jurisdiction are without remedy.

Affirmed.

(T. D. 36545.)

Memorandum of decisions, Court of Customs Appeals.

[Omitted from this edition.]

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Cigarettes and smoking tobacco, British-American Tobacco Co., Richmond, Va	36131
Cigarettes and smoking tobacco, Turco-American Tobacco Co., New York	36432
Cigarettes and tobacco, Samsoun Tobacco Co., New York	36369
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Cigarettes, Mundet & Son (Inc.), New York	36150
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Confectionery, Beech-Nut Packing Co., Canajoharie, N. Y	36355
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Crown corks, L. Mundet & Son (Inc.), Brooklyn, N. Y	36211
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Flavoring extracts, Fries & Fries, Cincinnati, Ohio	36473
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Fuses, Recording & Computing Machine Co., Dayton, Ohio	36417
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Hudson sealskin, C. & E. Chapal, Freres & Cie., Brooklyn, N. Y.	36152	
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Insulated wire and cable, Safety Insulated Wire & Cable Co., New York	36314	
Jams and jellies, Greek Products Co., New York	36292	
Jams, jellies, etc., Humbert & Andrews (Inc.), Brooklyn, N.Y.	36072	
Kidney pills, Foster-Milburn Co., Buffalo, N. Y	36182	
Kolynos dental cream, Kolynos Co., New Haven, Conn	36313	
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Lubricating oil, Hudson Oil Co. (Inc.), New York	36081	
Lubricating oils and tanning extracts, Vacuum Oil Co., New York	36351	
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Medicinal preparations, Barclay & Co., New York	36302	
Medicinal preparations, E. E. Dickinson & Co., (Inc.) Essex, Conn	36328	
Medicinal preparations, H. S. Wampole Co., Baltimore, Md	36377	
Medicinal preparations, J. A. Edwards, Whitney Point, New York	36296	
Medicinal preparations, Kilmer & Co., Binghamton, N. Y	36327	
Medicinal preparations, Lydia E. Pinkham Medicine Co., Lynn, Mass	36284	
Medicinal preparations, Maltine, Co., New York	36378	
Medicinal preparations, Schieffelin & Co., New York	36471	
Medicinal preparations, Upjohn Co., Kalamazoo, Mich	36442	
Medicinal and toilet preparations, etc., Parke, Davis & Co., Detroit, Mich	36434	
Medicinal and toilet preparations, etc., Sharpe & Dohme, Baltimore, Md	36233	
Metal alloys, Fidelity Metal Co., Brooklyn, N. Y	36181	
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Metal articles, Brown & Sharpe Manufacturing Co., Providence, R. I	36202	
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Motorcycles and delivery vans, Reading Standard Co., Reading, Pa	36294	
Motorcycles, Hendee Manufacturing Co., Springfield, Mass., drawback on	36337	
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Oil pull engines, Advance-Rumely Co. (Inc.), Laporte, Ind	36101	
Paint oil, Petroleum Products Co., New York	36286	
Panama hats, Ecuadorian Panama Hat Co., New York	36430	
Panama hats, Royal Panama Hat Co., New York	36070	
Pianos and player pianos, J. & C. Fischer (Inc.), New York	36356	
Pianos and player pianos, W. Tonk & Bro. (Inc.), New York	36315	
Plasters and medicated gauze, Seabury & Johnson, New York	36495	
Pond's extract; T. D. 35685 amended	36242	
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Ribbons, silks, etc., Wertheimer Bros., New York	36333	
Rice, M. J. Brandenstein & Co., San Francisco, Cal.	36096	
Saw plates, E. C. Atkins & Co., Indianapolis, Ind.	36243	
Semiautomatic switchboard equipment, Western Electric Co., Chicago, Ill.	36134	
Sen-Sen breath perfume, American Chicle Co., Rochester, N. Y.	36071	
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Shell bodies, E. W. Bliss Co., New York	36247	
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Shoes, A. E. Little & Co., Lynn, Mass.	36066	
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Skirts, Korach & Co., Cleveland, Ohio	36133	
Soda fountains, Liquid Carbonic Co., Chicago, Ill.	36414	
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Spark plugs, Rajah Auto-Supply Co., Bloomfield, N. J.	36153	
Spectacles, eyeglasses, etc., T. A. Willson & Co. (Inc.), Reading, Pa.	36099	
Steam turbines, etc., De Laval Steam Turbine Co., Trenton, N. J.	36240	
Syringes, MacGregor Instrument Co., Boston, Mass.	36497	
Tire fabrics, etc., Bay State Cotton Corporation, Boston, Mass.	36325	
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Toilet preparations, T. Ricksecker Co., New York	36244	
Toilet preparations, Vail Bros., Philadelphia, Pa.	36295	
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Vanillin, Monsanto Chemical Works, St. Louis, Mo.	36226	
Veneers, G. H. Jones, New York	36113	
Wall coverings, etc., Richter Manufacturing Co., Tenafly, N. J.	36516	
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Austin, Nicholas & Co., New York, drawback on	36112	
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